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**IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH**

MIKE PETKE, an individual,

Plaintiff,

v.

UTAH SOCCER, LLC, d/b/a REAL SALT
LAKE, a Utah limited liability company,

Defendant.

**UTAH SOCCER, LLC, D/B/A
REAL SALT LAKE'S MOTION TO
COMPEL ARBITRATION AND
DISMISS OR, IN THE ALTERNATIVE,
STAY THE PROCEEDINGS**

Case No. 190907265

Judge Patrick Corum

Pursuant to Rules 7(b)-(c) and 12(b)(1) of the Utah Rules of Civil Procedure and the Utah Uniform Arbitration Act ("UUA"),¹ Utah Soccer, LLC, d/b/a Real Salt Lake ("RSL"), by and through counsel, hereby respectfully files this Motion to Compel Arbitration and Dismiss or, in the Alternative, Stay the Proceedings (the "Motion").

¹ See UTAH CODE ANN. § 78B-11-101 *et seq.*

INTRODUCTION, RELIEF REQUESTED, AND GROUNDS THEREFOR

At the heart of this dispute is the September 30, 2017 employment agreement between Plaintiff Mike Petke (“Petke”) and RSL (the “Agreement”).² Petke challenges the propriety of his termination under the Agreement for inappropriate post-game conduct unbecoming of an RSL representative.

The Agreement requires Petke to arbitrate the dispute. Specifically, the Agreement provides that “[Petke] expressly acknowledges that [he] is subject to the jurisdiction of the League Commissioner” and will “comply with . . . all constitutions, bylaws, rules, regulations, policies, guidelines, directives, instructions, rulings, orders and agreements . . . of [MLS].”³ The MLS constitution (the “MSL Constitution”) provides that the League “Commissioner has full and . . . exclusive jurisdiction and authority to arbitrate and resolve . . . any dispute . . . between any [team] and any employee of such [team] if the dispute relates to such [team’s] MLS business.”⁴ A dispute between a former head coach arising from his post Major League Soccer (“MLS”) game conduct pertains to RSL’s MLS business. Accordingly, Petke is contractually bound to arbitrate his dispute with RSL. The MLS Commissioner is aware of this lawsuit, has asked Petke to withdraw his Complaint, and is prepared to arbitrate Petke’s claims.⁵ RSL respectfully asks the Court to compel arbitration before the MLS Commissioner and dismiss this lawsuit, or in the alternative, stay this action pursuant to the UUAA and/or Rule 12(b)(1).⁶

² See Employment Agreement, dated Sept. 30, 2017, attached hereto as “**Exhibit A.**”

³ *Id.* at § 1.03(3).

⁴ See Major League Soccer Constitution, dated Jan. 1, 2017, attached hereto as “**Exhibit B.**”

⁵ See Ltr. from A. Schmidt to B. Johnson *et al.*, dated Sept. 24, 2019, attached as “**Exhibit C.**”

⁶ If arbitration is not compelled, RSL reserves the right to seek dismissal pursuant to the remaining defenses provided under Rule 12(b). Indeed, in an abundance of caution, RSL has not substantively addressed any of Petke’s claims to avoid any potential argument of waiver of the

BACKGROUND

A. Petke's Employment Agreement with RSL

1. RSL is an American professional soccer franchise that competes as a team in the MLS league. MLS is sanctioned by the United States Soccer Federation and represents the sport's highest level in the United States.

2. On September 30, 2017, RSL and Petke entered into an Agreement that provided that Petke would serve as RSL's head coach through the 2020 MLS season.⁷

3. The Agreement sets forth the terms of the employment relationship between RSL and Petke, including Petke's duties, compensation, benefits, as well as the rights and remedies of both Petke and RSL.⁸

4. While the Agreement contemplated Petke's employment through the 2020 MLS season, the Agreement could be terminated by RSL for a variety of reasons, including (among other reasons) for committing any act that *brings [RSL] or [Petke] into public disrepute, scandal or ridicule, or reflects in a material adverse manner on the integrity or reputation of [RSL] or the Owner, including, without limitation, dishonest, fraudulent, unethical or inappropriate conduct.*⁹

5. Under Section 1.04 of the Agreement, Petke

expressly acknowledge[d] that [he] is subject to the jurisdiction of the League Commissioner and that the Commissioner and [RSL] may impose sanctions and other disciplinary measures, including, without limitation, suspending [Petke]

right to arbitrate this dispute. *See Cent. Fla. Invs., Inc. v. Parkwest Assocs.*, 2002 UT 3, ¶ 27, 40 P.3d 599, 609 (“Ideally [a party seeking to enforce an arbitration provision would] br[ing] a motion to compel arbitration before filing any other pretrial motions, such as [a] motion to dismiss” to avoid claims of substantially participating in the litigation).

⁷ *See generally* Ex. A; *see id.* at § 1.01.

⁸ *See generally id.*

⁹ *See id.* at § 3.01(F) (emphasis added).

(with or without pay) and imposing fines for violations of this Agreement or for actions (including on-field actions) that the Commissioner or [RSL], in their absolute discretion, determines to be contrary to the best interests of the League or [RSL].¹⁰

6. The Agreement also provides that Petke is bound by MLS rules and other governing documents. Specifically, Section 1.03 states, in its pertinent parts, that:

[Petke] covenants and agrees that throughout the Term that he will: (1) report to the Owner, General Manager and Vice President of Soccer Administration and/or such other person as directed by the Owner, (2) perform with diligence and fidelity the services and duties set forth in this Agreement on a full time, 12 month per year basis, subject to company vacation and personal time policies, and (3) comply with Company rules, regulations, policies and guidelines (“Team Rules”) applicable to the coaching staff and ***all constitutions***, bylaws, rules, regulations, policies, guidelines, directives, instructions, rulings, orders and agreements (“League Rules”) of Major League Soccer (“MLS”), its Commissioner and Soccer United Marketing (“SUM”) as they may exist, be adopted, supplemented, amended and modified from time to time during the Term.¹¹

B. The MLS Constitution Requires Petke’s Claims Against RSL To Be Arbitrated by the League Commissioner

7. The “rules and regulations” in the MLS Constitution “apply to the Members (including each Team Operator), all direct and indirect Owners, Team Operator employees and representatives, and any other Person to which any rule or regulation specifically applies.”¹²

8. Stated differently, “[a]ll Owners, officers, directors, ***employees***, agents and representatives of MLS and of each Member (including each Team Operator) are subject to and must comply with all League Rules, including the . . . provisions contained in th[e] Constitution.”¹³

¹⁰ See *id.* at § 1.04 (emphasis added).

¹¹ See *id.* at § 1.03 (emphasis added).

¹² See Ex. B at Introduction.

¹³ See *id.* at § 11 (emphasis added).

9. The MLS Constitution contains a comprehensive dispute resolution provision with which Petke has not complied with or honored.

10. By agreeing in the Employment Agreement with RSL to be subject to the MSL Constitution, Petke expressly obligated himself to arbitrate any dispute he had with RSL regarding MLS business.

11. The MLS Constitution expressly provides:

[T]he Commissioner has *full and . . . exclusive jurisdiction and authority to arbitrate and resolve:*

1. any dispute that involves two or more Members or two or more Owners (regardless of whether such Owners are Owners of the same Member or different Members);
2. *any dispute* (i) between any Player and any Member or (ii) *between any Member and any employee of such Member if the dispute relates to such Member's MLS business;*
3. any dispute between or among Players, other employees of MLS, or coaches or other employees of any Member (unless the dispute is unrelated to and does not affect MLS); and
4. any dispute involving any Member, any Player or any other employee of MLS or any Team Operator **that in the Commissioner's opinion is detrimental to the reputation and public image of MLS, any Team or the game of soccer** or involves or affects League policy.¹⁴

C. Petke's Rant and Termination Pursuant to the Agreement

12. On July 24, 2019, RSL was narrowly defeated by the Mexico-based professional soccer team the Tigres UANL ("Tigres"). After the game, Petke confronted the referees and got into a verbal altercation over several calls that were made near the end of the game.¹⁵ During his

¹⁴ See *id.* at § 2(D) (emphasis added).

¹⁵ See Compl. ¶ 47.

tirade, Petke called referee, John Pitti a “puto,” in addition to other in appropriate statements. “Puto” when used in anger, is intended to and is in fact extremely derogatory and offensive.

13. As a result of his conduct, Petke was assessed a red card by the officials. Petke continued yelling even after being ejected.¹⁶ Petke’s on-field outburst was all caught by television cameras.

14. After leaving the field, Petke returned to his office where he made a sign with “puto” written on it. He then returned to the tunnel connecting the field and the referees’ office where he encountered referee Pitti. Petke then continued his attack against Pitti by flashing his sign so Pitti could read it.¹⁷

15. On July 29, 2019, Petke formally acknowledged his “violation of club policy,” “including but not limited to aggressive behavior towards the referees at the end of the match, offensive language towards the referees at the end of the match, premeditated writing of offensive language on a piece of paper after the match, and offensive language towards the referees and [MLS] staff in the hallway after the match” (the “Violation of Club Policy Agreement”).¹⁸ After significant reflection and consideration, RSL, in its “absolute discretion, determine[d]” to terminate the Agreement for cause and notified Petke of its decision and attempted to negotiate an amicable separation.¹⁹

¹⁶ See *id.*

¹⁷ See *id.* at ¶ 48.

¹⁸ See *id.* at Exhibit A.

¹⁹ See *id.* at ¶ 81.

D. The Complaint is a Publicity Stunt that Impacts MLS

16. Petke rejected RSL's overtures and immediately retained legal counsel, which he is entitled to do.

17. Petke and his legal counsel then began a media campaign to attack RSL, thus impacting MLS publicly, in an apparent attempt to bully RSL into accepting Petke's demand to continue paying his salary in full notwithstanding the termination.

18. On September 12, 2019, approximately one month after his termination, Petke and his attorneys demanded an emergency meeting to discuss settlement with RSL.

19. RSL rearranged schedules to accommodate Petke's request for a meeting to try and amicably resolve the dispute. RSL agreed to meet with Petke's attorneys on September 16, 2019.

20. At the September 16, 2019 meeting, Petke's counsel presented RSL with a complaint and threatened to file the same and make the dispute public unless RSL accepted Petke's demands to continue to pay his salary. RSL was given until 4 p.m. that same day to respond.

21. When RSL informed Petke that it would not be able to respond to the 4 p.m. deadline because some of the decision makers were out of town and not available to address such an important matter, Petke and his counsel gave RSL until noon the next day even though RSL requested an additional week.

22. Petke and his counsel, apparently were desirous to try this matter in the press, immediately reported the filing of the complaint to pressure RSL to accede to Petke's demands.

23. Such action related to and impacts RSL's MLS business and the public image and reputation of MSL and RSL.

E. The Dispute Between Petke and RSL

24. The Complaint was filed contrary to Petke's Agreement that any dispute between Petke and RSL be arbitrated by the League Commissioner.

25. In the Complaint, among other damages, Petke is seeking the payment of his salary for the remaining term of the Employment Agreement even though his employment was terminated.²⁰

26. Petke asserts seven causes of action – including (1) breach of the Employment Agreement; (2) violation of the duty of good faith and fair dealing; (3) promissory estoppel; (4) quantum meruit/unjust enrichment; (5) intentional infliction of emotional distress; (6) defamation; and (7) false light – that purportedly stem from RSL's decision to terminate him and statements made regarding the termination.²¹

27. Petke does not dispute that he entered into the Agreement with RSL, nor does he dispute that the Agreement is valid and enforceable. On the contrary, Petke's Complaint explicitly asserts that "[o]n September 30, 2017. . . RSL entered into a new contract with Petke that would have him serve as the head coach during the 2018-2020 MLS seasons"²² and then makes claims to enforce Petke's interpretation of the Employment Agreement.

28. On September 24, 2019, MLS reminded Petke that the League Commissioner "has full and exclusive jurisdiction and authority to arbitrate and resolve any disputes between MLS

²⁰ See *id.* at ¶ 7.

²¹ See generally *id.*; see *id.* at ¶ 6.

²² See *id.* at ¶ 28.

member (like [RSL]) and employees (like Mr. Petke) that relate to the member's MLS-related business" and asked that Petke "immediately withdraw his complaint in Utah state court."²³

29. However, to date, Petke has not withdrawn the Complaint or requested that the League Commissioner arbitrate his dispute with RSL in accordance with the Agreement and MLS Constitution.

ARGUMENT

I. UNDER UTAH LAW, THE COURT MUST COMPEL PETKE TO ARBITRATE HIS CLAIMS.

Utah has a "strong public policy in favor of arbitration."²⁴ The Utah Supreme Court has recognized arbitration "as an approved, practical, and inexpensive means of settling disputes and easing court congestion."²⁵ Thus, "it is the policy of the law in Utah to interpret contracts in favor of arbitration, in keeping with our policy of extrajudicial resolution of disputes when the parties have agreed not to litigate."²⁶

This public policy favoring arbitration has been formally codified in the UUAA.²⁷ Specifically, the UUAA's primary substantive provision provides that a written agreement to arbitrate a "controversy arising between the parties to the ***agreement is valid, enforceable, and irrevocable*** except upon a ground that exists at law or in equity for the revocation of a contract."²⁸

²³ See Ex. C.

²⁴ *Cent. Fla. Ins.*, 2002 UT 3 at ¶ 33 (quoting *Chandler v. Blue Cross Blue Shield*, 833 P.2d 356, 358 (Utah 1992)).

²⁵ *Chandler*, 833 P.2d at 358 (quotation marks omitted).

²⁶ *Reed v. Davis Cty. Sch. Dist.*, 892 P.2d 1063, 1065 (Utah 1995); see also *McCoy v. Blue Cross and Blue Shield of Utah*, 2001 UT 31, ¶ 14 ("[I]t is our policy to interpret arbitration clauses in a manner that favors arbitration.")

²⁷ See UTAH CODE ANN. § 78B-11-101 *et seq.*

²⁸ UTAH CODE ANN. § 78B-11-107 (emphasis added).

To this end, the UUA provides:

On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement[,] . . . the court *shall* proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.²⁹

“Where the evidence relating to a purported agreement to arbitrate is undisputed, the district court has no discretion under the statute. It must compel arbitration.”³⁰ Accordingly, the only issues this Court must resolve when determining whether to compel arbitration are (A) whether RSL and Petke entered into a contract that contained an arbitration provision and (B) whether Petke has refused to arbitrate.

A. *The Agreement Incorporated a Broad Arbitration Provision, Which Applies to All Claims Asserted in Petke's Complaint.*

The plain language of the Agreement and Utah's preference for arbitration require that every aspect of this case be sent to arbitration. “The scope and existence of an agreement to arbitrate must be determined by the Court pursuant to contract law.”³¹ As a result, “direct and specific evidence of an agreement between the parties” must be established to require arbitration of the dispute.³² Based upon these guiding principles, deciding whether there is an “agreement to arbitrate” is a two-step inquiry that first requires the existence of an arbitration provision and then a determination of whether that provision applies to the particular claims at issue.

In accordance with these policy principles, “if there is any question as to whether the parties agreed to resolve their disputes through arbitration or litigation, . . . [the Court should]

²⁹ *Id.* at § 78B-11-108(1)(b)(emphasis added).

³⁰ *McCoy*, 2001 UT 31 at ¶ 10.

³¹ *Deseret Generation & Transmission Co-operative v. PacifiCorp*, No. 2:10-CV-00159-TC, 2010 WL 11561604, at *1 (D. Utah Sept. 1, 2010), attached hereto as Exhibit “D.”

³² *McCoy*, 2001 UT 31 at ¶ 17.

interpret the agreement keeping in mind [the] policy of encouraging arbitration.”³³ Likewise, “any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.”³⁴

1. The Agreement incorporated the arbitration provision from the MLS Constitution.

The first question is whether “an agreement to arbitrate exists.”³⁵ Generally, this requirement can be satisfied by pointing to a “universal arbitration provision” in the contract at issue.³⁶ However, this is not always the end of the inquiry. A contract that does not include an express arbitration provision may still ultimately be subject to arbitration if it incorporates or implicates an arbitration provision in a separate document. It is black letter law that “[w]here a claim alleging the breach of one contract requires construction of another contract with an arbitration clause, or implicates the parties’ rights or obligations under the other contract, that claim may be governed by the other contract’s arbitration clause.”³⁷ To be sure, “[i]f a dispute arises under a collateral agreement, arbitration of that dispute cannot be compelled merely based upon the existence of an arbitration clause in the main agreement.”³⁸ However, when the main agreement “is inextricably tied up with the merits of the underlying dispute” over the collateral agreement, the dispute is subject to the arbitration clause in the main agreement.³⁹ That is, when a

³³ *Central Fla. Invs., Inc.*, 2002 UT 3 at ¶ 16; *Reed*, 892 P.2d at 1065 (quotation marks omitted) (“It is the policy of the law in Utah to interpret contracts in of arbitration, in keeping with [the] policy of encouraging extrajudicial resolution of disputes when the parties have not agreed to litigation.”).

³⁴ *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25 (1983); see also *McCoy*, 2001 UT 31 at ¶ 14 (“It is our policy to interpret arbitration clauses in a manner that favors arbitration.”).

³⁵ UTAH CODE ANN. § 78B-11-107(2).

³⁶ See, e.g., *Deseret Generation*, 2010 WL 11561604, at *1.

³⁷ 4 AM. JUR. 2D ALTERNATIVE DISPUTE RESOLUTION § 54.

³⁸ *Prudential Lines, Inc. v. Exxon Corp.*, 704 F.2d 59, 64 (2d Cir. 1983).

³⁹ *Id.*

claim is “derivative of issues that fall within the scope of the arbitration clause,” it is subject to arbitration.⁴⁰

For example, in *Pervel Industries, Inc. v. TM Wallcovering, Inc.* the parties had a purchase and sale agreement that contained an arbitration clause and an exclusive distributorship agreement that did not.⁴¹ The plaintiff sued for breach of the exclusive distributorship agreement, but that claim was subject to the arbitration clause in the purchase and sale agreement, the court said, because the “relationship between the contract of purchase and the exclusive distributorship which it created” was “clear and direct.”⁴²

Here, Petke’s Complaint expressly alleges that he entered into the Agreement with RSL and tacitly concedes that the Agreement was valid and enforceable by seeking to recover the very compensation that he was purportedly owed under the Agreement.⁴³ That Agreement requires Petke to follow MLS’s Constitution. In particular, Petke unambiguously “acknowledge[d] that [he] is subject to the jurisdiction of the League Commissioner” and that he will “comply with Company rules, regulations, policies and guidelines . . . applicable to the coaching staff and *all constitutions*, bylaws, rules, regulations, policies, guidelines, directives, instructions, rulings, orders and agreements . . . of [MLS] . . . they may exist, be adopted, supplemented, amended and modified from time to time during the Term.”⁴⁴ The term “all constitutions . . . of MLS” includes the MLS Constitution. As such, Petke agreed that he is subject to the “jurisdiction of the League

⁴⁰ *Id.* at 64–65.

⁴¹ 871 F.2d 7 (2d Cir. 1989).

⁴² *Id.* at 9.

⁴³ *See, e.g.*, Compl. ¶ 7.

⁴⁴ *See* Ex A. at §§ 1.03–1.04 (emphasis added).

Commissioner” and the MLS Constitution sets forth the authority that is conferred to the League Commissioner.

The MLS Constitution *includes* a broad arbitration provision. This unambiguous arbitration provision provides that the League Commissioner has “***full and . . . exclusive jurisdiction and authority to arbitrate and resolve***” a number of disputes.⁴⁵ Petke cannot credibly seek to enforce RSL’s obligations under the Agreement while ignoring his own obligations.

2. Petke’s claims against RSL clearly fall within the scope of the arbitration provision provided in the MLS Constitution.

Next, it must be determined whether the “controversy is subject to [the] agreement to arbitrate.”⁴⁶ The UUAA makes clear that this Court shall only “decide whether an agreement to arbitrate exists [and] a controversy is subject to an agreement to arbitrate,” while “[a]n arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.”⁴⁷ To this end, the narrow inquiry is whether there is an arbitration provision (there is) and whether it would cover Petke’s claims (it does). Purported contradictions between various provisions of the Agreement go the validity of the Agreement as a whole and should be resolved by the arbitrator.

At the time the Agreement was signed, the effective – and still applicable – MLS Constitution stated that “the Commissioner has full and . . . exclusive jurisdiction and authority to arbitrate and resolve, *inter alia*, . . . any dispute . . . between any Member and any employee of such Member if *the dispute relates to such Member’s MLS business* . . . or the dispute is

⁴⁵ See *id.* at § 2(D) (emphasis added).

⁴⁶ UTAH CODE ANN. § 78B-11-107(2).

⁴⁷ UTAH CODE ANN. § 78B-11-107(2)-(3).

detrimental to the reputation and public image of MLS and RSL”⁴⁸ Petke’s claims fit neatly under the plain meaning of “any dispute” between RSL and Petke that relates to RSL’s “MLS business.” In particular, Petke’s claims for breach of contract, violation of the duty of good faith and fair dealing, promissory estoppel, and quantum meruit/unjust enrichment each relate to RSL’s purported dealings with its head coach, including, but not limited to, his employment relationship under the Agreement and disciplinary actions taken to address his post-game conduct that reflected poorly on the team and organization. Likewise, Petke’s claims of intentional infliction of emotional distress, defamation, and false light are alleged to stem from official statements from RSL regarding the termination of Petke’s employment as RSL’s head coach. Employment disputes with a head soccer coach and subsequent public statements about the termination of a head soccer coach are MLS business.

Moreover, Petke’s bully tactics of demanding emergency meetings and immediate concession to his demands to avoid the filing of his Complaint further exemplify the impact of his claims on RSL’s MLS business and the reputation and public image of MLS and RLS. Indeed, Petke is keenly aware that a long and drawn-out battle in open court will continue to garner media attention, solicit further questions about Petke’s inappropriate conduct and RSL’s decision to terminate, and only distract from RSL’s performance on the soccer field. Simply put, the mere existence of a lawsuit against a professional sports team – particularly one asserted by a former coach – invites media and public scrutiny that can harm the organization and league regardless of its merits. Petke’s conduct leading up to the inauguration of this suit and the statements made in

⁴⁸ See Ex. B at § 2(D)(emphasis added).

his Complaint are clear attempts to leverage the court of public opinion to obtain a favorable settlement.

Consequently, Petke's claims must be resolved by the League Commissioner in accordance with the jurisdiction that was expressly conferred by Petke.

B. Petke's Failure to Withdraw the Instant Lawsuit Demonstrates a Refusal to Arbitrate.

The second element for obtaining a motion to compel arbitration is also satisfied. Petke filed his Complaint in this Court on September 16, 2019. Shortly thereafter, on September 24, 2019, MLS asked Petke to withdraw his complaint and pursue arbitration. Specifically, MLS explained that the League Commissioner "has full and exclusive jurisdiction and authority to arbitrate and resolve any disputes between MLS member (like [RSL]) and employees (like Mr. Petke) that relate to the member's MLS-related business" and informed Petke that he "acknowledged that he is subject to the [League] Commissioner's jurisdiction in his employment agreement."⁴⁹ To date, Petke has not withdrawn the Complaint. Consequently, Petke's conduct demonstrates a refusal to arbitrate under the Agreement.

At bottom, the UUAA "leaves no place for the exercise of discretion" by a trial court, but instead mandates "the court *shall* . . . order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate."⁵⁰ As such, where RSL and Petke entered into the Agreement, which contained an arbitration provision and Petke has refused to arbitrate, the Court must compel arbitration.

⁴⁹ See Ex. C.

⁵⁰ UTAH CODE ANN. § 78B-11-108 (emphasis added).

II. THE COURT SHOULD DISMISS, OR IN THE ALTERNATIVE, STAY THE PROCEEDINGS.

Utah law requires the Court to dismiss or stay proceedings when a motion to compel arbitration is filed. The UUAA makes clear that “[o]nce a court compels arbitration, the court *must stay* the action or proceeding involving the issue or issues subject to arbitration.”⁵¹ Although the UUAA contemplates only a stay of an action that is subject to a mandatory agreement to arbitrate, courts have dismissed an action, rather than merely staying it, when all of the issues are arbitrable. Many federal courts evaluating the federal equivalent of the UUAA “have adopted a judicially-created exception that would allow [a] court[] to dismiss an action, rather than stay it, whe[n] it is clear that the entire controversy will be resolved by arbitration.”⁵² In this regard, “[t]he weight of authority clearly supports dismissal of the case when all of the issues raised in the district court must be submitted to arbitration.”⁵³

As discussed above, arbitration before the League Commissioner is the exclusive forum that Petke contractually agreed to resolve *any* dispute with RSL relating to RSL’s MLS business and disputes that are detrimental to the reputation and public image of MLS and RSL. Each of Petke’s claims against RSL relate to RSL’s MLS business. Petke’s also filed this complaint with

⁵¹ *Miller v. USAA Cas. Ins. Co.*, 2002 UT 6, ¶ 34, 44 P.3d 663, 673 (emphasis added); *see also* UTAH CODE § 78B-11-108.

⁵² *Bradford v. Pilot Travel Centers, LLC*, No. 2:18-CV-202 TS-DBP, 2018 WL 4082345, at *2 (D. Utah Aug. 27, 2018); *see also Sparling v. Hoffman Constr. Co., Inc.*, 864 F.2d 635, 638 (9th Cir 1988) (affirming district court’s dismissal of plaintiff’s claims where arbitration agreement required plaintiff to submit all claims to arbitration); *Thinket Ink Info Res., Inc. v. Sun Microsystems, Inc.*, 368 F.3d 1053, 1060 (9th Cir. 2004) (affirming district court’s dismissal of plaintiffs’ claims after district court granted motion to compel arbitration); *Alford v. Dean Witter Reynolds, Inc.*, 975 F.2d 1161, 1164 (5th Cir 1992) (explaining that the “weight of authority clearly supports dismissal of the case when all of the issues raised in the district court must be submitted to arbitration”).

⁵³ *Alford*, 975 F.2d at 1164.

the intent to harm the reputation and public image of MLS and RSL in an effort to coerce a settlement. As a result, retaining jurisdiction and staying Petke's claims against RSL serves no purpose here. Everything will and must be resolved by the League Commissioner. As such, this action should be dismissed with prejudice for lack of subject matter jurisdiction pursuant to a "judicially-created exception" to the UUAA or a complete lack of jurisdiction over the subject matter under Rule 12(b)(1) of the Utah Rules of Civil Procedure.⁵⁴

In the alternative, if the action is not dismissed, this Court should stay the proceedings. As mentioned above, the UUAA provides that "[i]f the court orders arbitration, the court on just terms **shall** stay any judicial proceeding that involves a claim subject to the arbitration."⁵⁵ The UUAA also mandates the stay of this action pending the resolution of this Motion. Indeed, "[i]f a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section."⁵⁶

Here, each of Petke's claims is subject to an arbitration provision. As a result, at a minimum, all proceedings in this case must be temporarily stayed pending resolution of this Motion. After the Court compels arbitration, the claim must be stayed permanently until the arbitration has concluded or the lawsuit should be dismissed.

⁵⁴ See UTAH. R. CIV. P. 12(b)(1)(providing for the dismissal of an action for "lack of jurisdiction over the subject matter").

⁵⁵ UTAH CODE § 78B-11-108(7) (emphasis added).

⁵⁶ *Id.* at § 78B-11-108(6); see also *Mariposa Exp., Inc. v. United States Shopping Solutions, LLC*, 2013 UT App 28, ¶19 stating that stay of action is appropriate under the UUAA).

CONCLUSION

There is no dispute that Petke entered into a valid and enforceable Agreement with RSL. As a part of the Agreement, Petke expressly acknowledged that he was subject to the jurisdiction of the League Commissioner and the MLS Constitution. The League Commissioner is granted the exclusive right to arbitrate specific disputes by the MLS Constitution, which was explicitly mentioned in the Agreement. Specifically, the MLS Constitution empowers the League Commissioner to arbitrate “any dispute . . . between any Member and any employee of such Member if the dispute relates to such Member’s MLS business . . . or is detrimental to the reputation and public image of MLS and RSL,” This case involves such a dispute. Thus, a valid arbitration agreement exists, and it covers all of Petke’s claims at issue in this lawsuit. In this regard, Petke must arbitrate all of his claims. Accordingly, RSL respectfully requests that the Court compel Petke to arbitrate his claims and dismiss or, in the alternative, stay this action.

DATED this 7th day of October, 2019.

Respectfully submitted,

KIRTON | McCONKIE

By: /s/ Ryan B. Frazier

Cameron M. Hancock

R. Gary Winger

Ryan B. Frazier

*Attorneys for Utah Soccer, LLC,
d/b/a Real Salt Lake*

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of October, 2019, I caused a copy of the foregoing
**UTAH SOCCER, LLC, D/B/A REAL SALT LAKE'S MOTION TO COMPEL
ARBITRATION AND DISMISS OR, IN THE ALTERNATIVE, STAY THE
PROCEEDINGS** was served on the following by the method indicated below:

Barry N. Johnson	() U.S. Mail, Postage Prepaid
Ryan B. Braithwaite	() Hand Delivered
BENNETT TUELLER	() Email
JOHNSON & DEERE	() Facsimile
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Travis Koch	() U.S. Mail, Postage Prepaid
OVERSTREET HOMAR & KUKER	() Hand Delivered
508 East Eighteenth Street	(X) Email
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Clayton E. Bailey	() U.S. Mail, Postage Prepaid
Benjamin L. Stewart	() Hand Delivered
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8350 North Central Expressway,	() Facsimile
Suite 650	() ECF
Dallas, Texas 75206	
cbailey@baileybrauer.com	
bstewart@baileybrauer.com	

/s/Marnae B. Hadlock



EXHIBIT A

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the “*Agreement*”) is made and entered into effective this 30th day of September, 2017, by and between UTAH SOCCER, LLC dba REAL SALT LAKE, a Utah limited liability company (the “*Club*” or “*Company*”); and MIKE PETKE (the “*Employee*”); and is based upon the following:

RECITALS:

A. Real Salt Lake is organized under the laws of the State of Utah. The purpose for which the Club is organized is to operate the Major League Soccer Team, Real Salt Lake and to operate Rio Tinto Stadium; and

B. After great expense in labor and other monies, Real Salt Lake has developed various methods of operation, contact information, marketing techniques, know-how, strategies, information processes, memoranda, notes, records, data, technologies, and other trade secrets and all objects associated with the foregoing, which are not in the realm of public knowledge (hereinafter collectively referred to as “*Proprietary Information*”). Said Proprietary Information was developed by or for the Club for its sole and confidential use. Real Salt Lake desires to maintain the secrecy of its Proprietary Information and to protect the same against use by others, including Employee.

C. Employee possesses unique education and skills essential to the purposes of the Club.

D. Real Salt Lake desires to engage the services of Employee in an employer-employee relationship.

E. Employee desires to be employed by the Club in the capacity of Head Coach of Real Salt Lake.

F. This Agreement shall supersede and replace that previous employment agreement signed between the Club and the Employee on March 29, 2017.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, RSL and Employee agree as follows:

ARTICLE I.

EMPLOYMENT AND DUTIES

1.01. Employment. RSL hereby employs Employee to be, and Employee accepts employment as the Head Coach of Real Salt Lake. In this regard, Employee shall have the following duties, including, but not limited to:

- A. In coordination with the Owner, General Manager, Vice President of Soccer Administration, Academy Technical Director and the Monarchs' Head Coach develop, deploy and supervise Real Salt Lake team(s) curriculum.
- B. In coordination with the General Manager, Academy Technical Director and Real Monarchs' Head Coach assist with player development planning for players from the Real Salt Lake Academy through the Real Salt Lake First Team.
- C. Conduct and supervise the Real Salt Lake First Team Practices, training camps, pre-season and training sessions.
- D. Coach the Real Salt Lake First Team in all exhibition, regular season, playoff, tournament, international and other games.
- E. Train and develop Real Salt Lake Youth players.
- F. Supervise and direct medical training and sports performance/strength training staff;
- G. Supervise and direct Real Salt Lake First Team Video Analyst
- H. Supervise and direct Real Salt Lake First Team Equipment Manager(s)
- I. Mentor and Train Real Monarchs' coaching staff
- J. Institute, Disseminate and Enforce Team and League Rules
- K. Participate in promotional, sponsorship and public relations activities requested by the Club upon reasonable prior notice, including, but not limited to, ticket, game, Team and Stadium promotions, clinics, speeches, interviews, photo sessions, public appearances, sponsor activities and participating in media programs as directed by the Club.
- L. Attend Club mandated media/public relations training.

1.02. Term. The term of this Agreement (the "Term") will commence on January 1, 2018 and will continue, unless extended or sooner terminated as provided herein, until December 31, 2020.

1.03. Fidelity and Exclusive Service. Employee covenants and agrees that throughout the Term that he will: (1) report to the Owner, General Manager and Vice President of Soccer Administration and/or such other person as directed by the Owner, (2) perform with diligence and fidelity the services and duties set forth in this Agreement on a full time, 12 month per year basis, subject to company vacation and personal time policies, and (3) comply with Company rules, regulations, policies and guidelines ("Team Rules") applicable to the coaching staff and all constitutions, bylaws, rules, regulations, policies, guidelines, directives, instructions, rulings, orders and agreements ("League Rules") of Major League Soccer ("MLS"), its Commissioner and Soccer United Marketing ("SUM") as they may exist, be adopted, supplemented, amended and modified from time to time during the Term. Without limiting the foregoing, League Rules shall include all guidelines and directives issued by the League regarding apparel and/or equipment required to be worn or used by players, the coaching staff and other members of the Team at games, practices, training camps, training sessions, clinics, while traveling for the Team and such other events as designated by the League. During the continuation of his employment by the Club hereunder, the Employee will devote substantially all of his business time, energy, attention and skill to the services of the Club and to the promotion of its interests in a professional, ethical and businesslike manner.

1.04. MLS Jurisdiction. Employee expressly acknowledges that Employee is subject to the jurisdiction of the League Commissioner and that the Commissioner and Club may impose sanctions and other disciplinary measures, including, without limitation, suspending Employee (with or without pay) and imposing fines for violations of this Agreement or for actions (including on-field actions) that the Commissioner or Club, in their absolute discretion, determines to be contrary to the best interests of the League or the Club. Employee expressly acknowledges that the Club may deduct, and the League may cause to be deducted, from any amounts due Employee under this Agreement, any fines or penalties so levied against Employee. Without limiting the foregoing, Employee expressly acknowledges and agrees that he shall be subject to discipline by the League, including, without limitation, fines, suspension (with or without pay) or termination of this Agreement, if:

- A. He (or any person acting in association with him) is involved with any attempt to fix, throw or otherwise improperly affect the outcome of any soccer game.
- B. He (or any person acting in association with him) gives or offers to give a bribe or gambles on the outcome of any soccer match.
- C. He fails to report to the League and Club, his knowledge of any attempt by any person to give or receive a bribe or to fix, throw or otherwise improperly affect the outcome of any soccer game.
- D. He uses alcohol or drugs in a manner that interferes with the performance of his duties hereunder.
- E. He makes a statement or engages in conduct that is prejudicial to the interests of the League or engages in a course of deliberate insubordination or a single egregious act of insubordination.

The League, as applicable, shall determine in good faith and at its sole discretion, whether Employee has engaged in any of the above-listed behavior.

1.05. Location. Employee shall work out of an office established by the Club in either Sandy, Utah or Herriman, Utah.

ARTICLE II.

COMPENSATION

2.01. Compensation. For all services rendered by Employee under this Agreement, Club shall pay Employee a salary and bonuses (the "**Compensation**"), identified in SCHEDULE A, payable in twenty-four (24) installments according to the Club's regular pay schedule. All Salary compensation shall be subject to such customary withholding and other employment taxes as are required by law with respect to compensation paid by an employer to an employee.

2.02. Car Stipend. Employee shall receive a stipend in the amount of \$12,000 annually (\$500 per pay period) during the Term to be used for an automobile or related expenses.

2.03. Housing Loan. Employee may elect to take a housing loan of up to One Hundred Thousand and No/100 (\$100,000). Such loan shall be subject to that separate and distinct loan agreement and Promissory Note. The loan shall be forgiven on the following schedule should Employee remain employed with the Club through December 31, 2020:

- A. \$33,000 of the loan principal shall be forgiven on December 31, 2018
- B. \$33,000 of the loan principal shall be forgiven on December 31, 2019
- C. The remaining \$34,000 of the loan principal shall be forgiven on December 31, 2020.

2.05. Airline Tickets. Employee shall be permitted four (4) round trip airline tickets for him and his family anywhere in the United States annually.

2.06. Coaching Courses and Certifications. Subject to approval by the General Manager, the Club shall pay for costs associated with required and recommended coaching certifications annually, including, but not limited to the MLS Pro coaching course.

2.07. Club Tickets. Each season during the Term, Club shall provide Employee, at Club's expense, eight (8) season tickets for Real Salt Lake, Real Monarchs and Real Salt Lake Academy home games. Employee shall be responsible for any taxes (Federal, Sales, and State) on the tickets. The location of the seats represented by such tickets shall be determined by the Club and the use of such tickets shall be subject to Club rules and regulations.

2.08. Other Benefits. Employee shall be entitled to medical insurance, vacation days, holiday and personal days, cell phone stipend and such other employee benefits as are offered by the Club to its employees.

2.09. Reimbursement of Expenses Incurred by Employee. Club shall reimburse Employee for all business expenses, including travel and entertainment, incurred by Employee in the course of his employment provided that:

- A. Each such expenditure is reasonable and budgeted, and is incurred in accordance with the adopted policies of the Club;
- B. Each such expenditure is of a nature qualifying it as an expense deduction on Club's federal and state income tax returns; and
- C. Employee furnishes Club with adequate records and other documentary evidence required by federal and state statutes or regulations issued by the appropriate taxing authorities for the substantiation of each such expenditure as an income tax deduction.

ARTICLE III.

TERMINATION OF EMPLOYMENT

3.01. Termination. This Agreement shall be deemed to be terminated prior to the expiration of the Term upon the death of the Employee. In addition, the Club may terminate this Agreement upon written notice by Club to Employee in the event of the occurrence of any of the following:

- A. Disability of the Employee that renders him incapable of performing his services for at least sixty (60) days out of any 12-month period.
- B. Employee's willful failure, neglect or refusal to render services hereunder as directed, or any material breach of this Agreement by Employee.
- C. Employee's gross negligence or willful misconduct in performing his duties, hereunder.
- D. Employee's arrest for any drug, alcohol or sex related incident.
- E. Employee's conviction of or plea of guilty or nolo contendere to any felony or to a misdemeanor involving a crime of moral turpitude.
- F. Employee's commission of any action or involvement in any occurrence that brings Club or Employee into public disrepute, scandal or ridicule, or reflects in a material adverse manner on the integrity or reputation of the Club or the Owner, including, without limitation, dishonest, fraudulent, unethical or inappropriate conduct;

- G. Employee's breach of fiduciary duty (including loyalty) to the Club or engaging in any activity that is in conflict with, adverse to, or materially injurious to the business interests or goodwill of the Club;
- H. Employee engages in any activity set forth in Section 1.04 above.
- I. Employee's failure to comply with Team Rules or League Rules.
- J. Club is directed by the League Commissioner to terminate or suspend this Agreement, including, without limitation, because Employee engages in any activity set forth in Section 1.04 above.
- K. Club may also terminate this Agreement upon written notice to Employee for any reason other than as set forth in Sections 1.04 and 3.01 above.

3.02. Effect of Termination.

- A. Upon termination under Sections 1.04 and/or 3.01(a)-(j) above or upon Employee's termination of this Agreement, all of the rights and obligations of the parties hereunder shall forever cease, except that Club shall remain obligated to pay Employee any portion of the Compensation that has been earned by Employee, but remains unpaid upon the date of termination.
- B. Upon termination under Section 3.01(k), all of the rights and obligations of the parties hereunder shall forever cease, except that Club shall only remain obligated to pay: (1) Employee any portion of the Compensation that has been earned by Employee, but remains unpaid upon the date of termination; and (2) Employee's remaining base Compensation, not including any unearned bonuses, car stipend, per diem, or unfilled reimbursements, through the end of the then existing term. For example, if Employee's employment is terminated pursuant to Section 3.01(k) on July 31, 2018, the Club would owe employee any earned but unpaid Compensation, bonuses, car stipend, per diem and filed reimbursements up to the July 31, 2018 termination date and Club would also owe Employee unearned base salary from July 31, 2018 through the end of the Term.
- C. If Employee's employment is terminated under Section 3.01(k) and Employee subsequently performs services with another Employer during the remainder of the Term, amounts earned or received by Employee for those services shall reduce any amounts owed under Section 3.02(B) above by the amount earned. For example, if Employee is terminated on July 31, 2020 and is owed \$250,000 by the Club in unearned base salary, pursuant to Section 3.02(B), through the end of 2020 Term, but Employee obtains another coaching position on August 1, 2020 paying \$100,000 through the end of the 2020 Term, Club shall only owe Employee, \$150,000 through the end of the 2020 Term.

3.03 Effect on Other Provisions. Employee's obligation to perform under any and all of the remaining provisions of this Agreement and specifically Article IV shall remain in full force and effect as set forth in this Agreement after the termination of employment.

3.04. Exit Interview. Immediately prior to the termination of Employee's employment hereunder, for whatever reason and whether by Employee or Club, Employee agrees to submit to an exit interview with an appropriate officer of Club for the purpose of determining Employee's present and future compliance with Article IV below.

3.05. Return of Property. Upon termination of his employment, Employee shall immediately return to the Club any and all Club property, including any copies of any material in any form or medium within Employee's possession, use or control.

ARTICLE IV.

NON-DISCLOSURE AND CONFIDENTIALITY

In consideration of the employment and benefits granted Employee hereunder, Employee specifically agrees to be bound under the terms of this Article IV.

4.01. Non-Disclosure. Employee will acquire and create information respecting the intimate and confidential affairs of the Club in the various phases of its operations. Accordingly, Employee agrees that he shall not at any time use for himself nor disclose to any person not employed by the Club any such knowledge or information acquired during the term of his employment hereunder. Furthermore, Employee expressly agrees to disclose to Club any and all information, discovered by Employee or otherwise available to him, that may be relevant to Club's activities, existing or contemplated, all of which shall be the sole and exclusive property of the Club.

4.02. Proprietary Information. Employee agrees that all Proprietary Information shall be Club's sole and exclusive property. Employee shall not, except for Club use, copy or duplicate any Proprietary Information, nor remove the same (or any portion thereof) from the Club's facilities, nor use any information concerning the Proprietary Information except for the Club's benefit, either during his employment or thereafter. Employee agrees that he will deliver all of the Proprietary Information that may be in his possession to the Club on termination of his employment, or at any other time at the Club's request, together with his written certification of compliance herewith. Employee shall take such action, including without limitation, the storing of Proprietary Information in a secure location as may be necessary to maintain the confidentiality and prevent the inadvertent disclosure of the Proprietary Information entrusted to or otherwise within his possession or control.

4.03. Continuation of Obligations. Employee's obligations of confidentiality and cooperation set forth in this Article IV are ongoing in nature and shall not terminate upon termination of Employee's employment hereunder, but shall continue for a period of five (5) years after such employment terminates.

ARTICLE V.

NON- SOLICITATION, COMPETITIVE PLANNING OR DISPARAGEMENT

5.02. No Solicitation Other Employees. During the term of Employee's employment hereunder and for a period of one (1) year thereafter, Employee agrees not to influence or attempt to influence any other active employee or agent of the Club to terminate his or her employment or work with the Club or to work for or on behalf of any competitor or potential competitor of the Club, including without limitation, Employee himself or any other entity controlled or organized by Employee or in which Employee is an officer, a director or agent.

5.03. No Competitive Planning. During the term of his employment with Club hereunder, Employee agrees not to undertake any planning or planning activities relating to business interests outside of Club that would be competitive in nature with the activities of the Club, or any of Club's subsidiary or related entities.

5.03. Non-Disparagement. Employee agrees that during the Term and for one (1) year thereafter, he shall refrain from making any disparaging remarks regarding the Club or the Team, its players, management, ownership, employees, or fans.

5.04. Specific Enforcement. Employee agrees that the violation of any of the covenants set forth in this Article V would cause irreparable injury to the Club and that any remedy at law for breach of such provision would, therefore, be inadequate and that in addition to any other remedy provided by law, a court of competent jurisdiction may issue an injunction enjoining the Employee from further action in violation of the terms of such provision and that Club may enforce any other legal right it has or may have or may obtain a judgment for any damages it obtains by reason of a breach of any such provision.

5.05 Covenants Upon Termination of Club. If the Club dissolves, terminates operations, or otherwise ceases to do business for any reason, then the Employee is relieved of the covenants of this Article V.

ARTICLE VI.

ADDITIONAL ACTIVITIES

6.01. Additional Activities. During the Term, Employee will have the right to make public appearances, accept speaking engagements, participate in films or radio, television, internet programs, and appear in commercials or advertisements or endorse products, services or companies (the "Additional Activities"); provided however that: (1) Employee may not undertake any Additional Activities without the prior written consent of the Club, such consent shall not be unreasonably withheld; and (2) such Additional Activities shall: (a) not unreasonably interfere with Employee's duties hereunder, (b) be consistent with Team Rules and League Rules, as well as the image desired to be portrayed by the Club, the League and SUM, (c) not conflict with the rights and interests of the Club, League or SUM sponsors and licensees, and (d) unless otherwise consented to by Club, the Stadium Operator, the League or SUM, as applicable, Employee may not utilize any marks, insignia, logos, uniforms, name or other intellectual property of the Team,

the Stadium, the League or SUM. Other than providing his services as head coach of the Team hereunder and Additional Activities in accordance with this Article, Employee shall not engage in any other business activities during the Term, without the prior written consent of the Club, which shall not unreasonably be withheld. Notwithstanding the foregoing, Employee may (a) make investments (active or passive) that do not unreasonably interfere with Employee's duties and (b) engage in charitable, religious or civic activities that do not unreasonably interfere with Employee's duties. Furthermore, during the Term, Employee shall not: (1) engage in discussions with any other professional soccer team regarding employment by such team, or (2) enter into any oral or written agreement with, or accept any payment from, any Club player or member of Club staff for the provision of any services.

ARTICLE VII

MISCELLANEOUS

7.01. Notices. Any notices to be given by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices are to be addressed to the parties at the addresses below:

If to Club:

Utah Soccer, LLC.
Attn: Dell Loy Hansen
9256 South State Street
Sandy, Utah 84070

If to Employee:

Mike Petke
[REDACTED]

Either party may change its address by written notice in accordance with this Section 7.01. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of the date of mailing.

7.02. Office Facilities. Club shall operate and maintain facilities, and shall provide furnishings, equipment, and other supplies as suitable to Employee's position and adequate for the performance of his duties.

7.03. Records and Files. All Club records shall belong to and remain the property of Club. Upon termination of his employment hereunder, Employee shall not be entitled to keep or reproduce any of Club's records.

7.04. Rights and Obligations of Successors. This Agreement shall be assignable and transferable by the Club to any subsidiary or affiliate of the Club and shall inure to the benefit of and be binding upon the Employee, his heirs, personal representative, and assigns. As to the Employee, however, his rights and obligations hereunder are personal in nature and shall not be transferred or otherwise assigned.

7.05. Waiver. A waiver by any party of any provision hereof, whether in writing or by course of conduct or otherwise, shall be valid only in the instance for which it is given, and shall

not be deemed a continuing waiver of said provision, nor shall it be construed as a waiver of any other provision hereof.

7.06. Paragraph Headings. The paragraph headings of this Agreement are inserted only for convenience and in no way define, limit or describe the scope or intent of this Agreement nor affect its terms and provisions.

7.07. Preparation of Agreement. The parties hereto acknowledge that they have both participated in the preparation of this Agreement and, in the event that any question arises regarding its interpretation, no presumption shall be drawn in favor of or against any party hereto with respect to the drafting hereof.

7.08. Governing Law. This Agreement, and all matters relating hereto, including any matter or dispute arising out of the Agreement, shall be interpreted, governed, and enforced according to the laws of the State of Utah, and the parties hereto consent to the jurisdiction of any appropriate court in the State of Utah to resolve such disputes.

7.09. Amendments. This Agreement may be amended at any time upon mutual agreement of the parties hereto, which amendments must be reduced to writing and signed by both parties in order to become effective.

7.10. Entire Agreement. This Agreement constitutes and represents the entire agreement of the parties hereto with respect to the subject matter hereof, and all other prior agreements, covenants, promises and conditions, verbal or written, between these parties are incorporated herein. No party hereto has relied upon any other promise, representation or warranty, other than those contained herein, in executing this Agreement.

7.11. Further Instruments. The parties hereto agree that they will execute any and all other documents or legal instruments that may be necessary or required to carry out and effectuate all of the provisions hereof.

7.12. Counterparts. This Agreement may be executed in one or more counterparts, each of which, including facsimiles or .pdfs thereof, shall be deemed an original, but all of which together shall constitute one and the same Agreement.


7.13. Attorney Fees. In the event that either party seeks to enforce this Agreement, whether by the filing of a legal action or otherwise, the parties hereby agree that each party shall be liable to pay their own attorney fees, court costs, and other related costs and expenses incurred in connection with prosecuting or defending any such claim.

7.14. Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

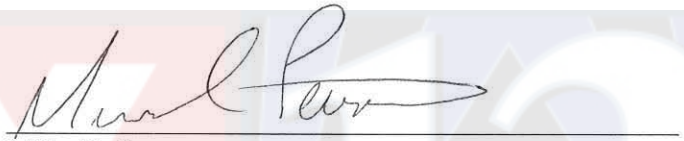
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CLUB:

UTAH SOCCER, LLC
A Utah Limited Liability Company

By 
Dell Loy Hansen, President

EMPLOYEE:



Mike Petke



SCHEDULE A **Compensation Schedule**

	<u>2018</u>	<u>2019</u>	<u>2020</u>
SALARY	400,000	450,000	500,000
HOUSING LOAN FORGIVENESS	33,000	33,000	34,000
CAR STIPEND	12,000	12,000	12,000
EIGHT SEASON TICKETS	6,960	6,960	6,960
FOUR (4) ROUND TRIP TICKETS HOME ANNUALLY	<u>2,000</u>	<u>2,000</u>	<u>2,000</u>
Total Annual Compensation	453,960	503,960	554,960
<u>Total Guaranteed Compensation Value</u>	1,512,880		


Dell Loy Hansen
President
Utah Soccer, LLC


Mike Petke
Head Coach
Real Salt Lake

BONUS TRANCHES

MLS

Host Playoff Game (Per Game)	10,000	10,000	10,000
Appear in MLS CUP	15,000	15,000	15,000
Win MLS CUP	25,000	25,000	25,000
Win Supporter's Shield	10,000	10,000	10,000

US OPEN CUP

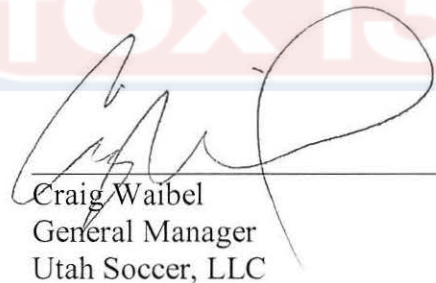
Win Home Open Cup Match	10,000	10,000	10,000
Win Open Cup	25,000	25,000	25,000

CONCACAF


Host a Home Game	10,000	10,000	10,000
Advance to Quarterfinals	10,000	10,000	10,000
Advance to Semifinals	10,000	10,000	10,000
Advance to Final	10,000	10,000	10,000
Win CCL	30,000	30,000	30,000

YOUTH DEVELOPMENT

Monarchs Performance (USL Playoffs)	7,500	7,500	7,500
30 MLS Starts for U-24 Players (per year)	5,000	5,000	5,000
40 MLS Starts for U-24 Players (per year)	7,500	7,500	7,500
50 MLS Starts for U-24 Players (per year)	10,000	10,500	10,500



Craig Waibel
General Manager
Utah Soccer, LLC



Mike Petke
Head Coach
Real Salt Lake



EXHIBIT B

**MLS CONSTITUTION
AS OF JANUARY 1, 2017**

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Section 5. Transfer of Membership

Section 6. Relocation

Section 7. Tampering

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Section 9. Non-Competition

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Introduction

The Constitution is a compilation and summary of (i) key sections of the Governing Documents of Major League Soccer, L.L.C. (“MLS”) and Soccer United Marketing, LLC (“SUM”); (ii) certain resolutions of the Board of Governors; (iii) certain League Governance matters; and (iv) other material agreements that impact Members and Owners.

The Constitution is intended to serve as a guide for Members and Owners to certain material rules and regulations that govern the operation of a Team and ownership of interests in MLS and SUM. These rules and regulations apply to the Members (including each Team Operator), all direct and indirect Owners, Team Operator employees and representatives, and any other Person to which any rule or regulation specifically applies. In the case of any conflict between the summary provided for in this Constitution and the original source for the rule or regulation, the original source will apply, except in the case where the Constitution is the original source of such rule or regulation (as may be the case for Board resolutions and other Board actions) or where the Constitution imposes requirements that are in addition to, but not in conflict with, any rule or requirement set forth in the original source.

A. Governing Documents, Board Resolutions and League Governance (together the “League Rules”).

1. *Governing Documents.* Each Member and Owner is bound by the MLS and SUM Governing Documents, which include:

(i) **MLS LLC Agreement:**

The MLS LLC Agreement is the basic ownership agreement for MLS that addresses such areas as (1) rights and benefits of each class of equity, (2) the distribution of profits and losses, (3) the corporate governance of MLS, (4) the consequences for failure to make capital calls and (5) the limitations on Members to pursue certain soccer-related activities (such as owning other soccer teams in North America or conducting the activities of non-North American soccer teams in North America). All Members (including Team Operators and Class B Members) are bound by the MLS LLC Agreement.

(ii) **SUM Operating Agreement:**

The SUM Operating Agreement is the basic ownership agreement for SUM. The original SUM Operating Agreement was adopted in 2002 upon the formation of SUM. Like the MLS LLC Agreement, the SUM Operating Agreement addresses matters such as: (1) the rights and benefits of each class of equity, (2) the distribution of profits and losses, (3) the corporate governance of SUM, and (4) the requirement that Members (including Team Operators) provide SUM a first opportunity to participate in certain soccer-related business opportunities.

(iii) Team Operating Agreement:

The Team Operating Agreement governs the relationship between MLS and the Team Operator and provides the basic framework for the operation of a Team. Each Team Operator has entered into a Team Operating Agreement with MLS. The Team Operating Agreement addresses matters such as: (1) the rights and responsibilities of a Team Operator, (2) the allocation of revenues and expenses between MLS and the Team Operator, (3) the Team Operator's local marketing and operating territory and (4) the procedure for terminating the Team Operating Agreement or an Owner's ownership interest in the Team Operator.

(iv) MLS Canada LP Agreement:

(v) MLS Canada ULC Agreement:

(vi) MLS Luxembourg SarL Articles:

MLS Canada LP, MLS Canada ULC and MLS Luxembourg are wholly owned subsidiaries of MLS that hold the rights to the Canadian teams and allow MLS to conduct business in Canada.

(vii) SUM Dutch Holdings LLC Agreement:

(viii) SUM Netherlands Cooperatief U.A. Agreement:

SUM Dutch Holdings LLC and SUM Netherlands Cooperatief U.A. are wholly owned subsidiaries of SUM and hold the right to exploit the MLS commercial rights in Canada.

2. *Board Resolutions.* The Board of Governors has the authority to adopt policies that apply to the operation of the League and its Teams. Certain resolutions not already incorporated into the Governing Documents, which are summarized in this Constitution are:

- (i) The Diversity Initiative;
- (ii) The Anti-Tampering Policy; and
- (iii) Board Governance Policy;

3. *League Governance.* The Commissioner/CEO has the authority to establish League Governance that govern the day-to-day operations of the League, MLS and SUM. The League Governance is set forth in a series of manuals that are revised and distributed to the Teams on an annual basis. It is important that Team employees are familiar with the detailed rules that govern their operational areas.

(i) Competition Guidelines: The Competition Guidelines contain the applicable rules and regulations relating to:

- League competition and playing rules;
- Negotiation and execution of player contracts;
- Player salaries;
- Player transfers; and
- Player roster rules.

(ii) Team Commercial Guidelines: The Team Commercial Guidelines contain the rules that govern the sale of corporate sponsorships and other commercial rights by Team Operators as well as the creation, ownership, modification and use of MLS and Team intellectual property and logos, including:

- A list of the product, service and retail categories in which Team Operators may sell local sponsorships;
- The procedure for executing contracts and obtaining League approval;
- The rights and benefits that may be provided to local Team sponsors; and
- The guidelines for the sale of jersey sponsorships, stadium sponsorships and on-site activation.

(iii) Game Operations Manual: The Game Operations Manual contains rules and regulations that govern:

- Game presentation, procedures and operation (including pregame, game and postgame);
- Team and Stadium Security;
- Field regulations;
- On-field discipline;
- Game officials; and
- All additional operational matters surrounding an MLS game.

(iv) Broadcasting Manual: The Broadcasting Manual contains rules and regulations that govern production standards, requirements and general guidelines for MLS game broadcasts, including:

- The requirements for local broadcast rights;
- The size of the local broadcast territory;
- The requirements to produce a broadcast feed for all home games; and
- Coordination with the League for approval of local broadcast agreements and production.

(v) Public Relations Manual: The Public Relations Manual governs the role of each Team's public relations department, including:

- Treatment of credentialed media;
- Information dissemination;
- Production of media guides;
- Photographer responsibilities; and
- Coordination with broadcast partners.

(vi) MLS Medical Policies and Procedures Manual: The Medical Policies and Procedures Manual governs medical treatment of players for the League as a whole, including:

- Insurance coverage;

- Medical records;
 - Medical treatment and procedures; and
 - Substance Abuse and Behavioral Health policy.
- (vii) MLS Venue Design Guide: The MLS Venue Design Guide contains general design requirements and recommendations for minimum standards for MLS stadiums, including:
- Seating Capacity;
 - Television Camera Positions;
 - Press Facilities;
 - Locker Rooms; and
 - Playing Field.
- (viii) MLS Training Site Design Guide: The MLS Training Site Design Guide contains general design requirements and recommendations for minimum standards for Team training sites, including:
- Site Accessibility;
 - Broadcast and Media;
 - Press Facilities;
 - Team Facilities; and
 - Playing Field.

4. *Other Material Agreements.* Team Operators are impacted by other material agreements including:

- (i) The Collective Bargaining Agreement between MLS and the Major League Soccer Players Union;
- (ii) The Group License Agreement between MLS and the Major League Soccer Players Union;
- (iii) The MLS Rights Agreement between MLS and SUM;
- (iv) All National Media Agreements; and
- (v) Certain National Sponsorship Agreements and Licensing Agreements.

B. Team Rights.

As noted above, a Team Operator's relationship with MLS is governed primarily by its Team Operating Agreement. Pursuant to the terms of the Team Operating Agreement, a Team Operator has the right and obligation to conduct the following activities in its "Home Territory" (i.e., generally, the area within the 75-mile radius from the Team's home stadium):

1. Sell Tickets in its Home Territory;
2. Employ Team Staff and Coaches:
 - (i) The Team Operator hires a Team President, General Manager, Coach and other Team Staff; and

- (ii) The hiring process for any coach or team soccer-related technical personnel must comply with the League's Diversity Initiative.

3. Select Players for the Team:

- (i) As described more fully in the Competition Guidelines, all Players are paid by MLS and player contracts are negotiated by the League Office.
- (ii) Teams are not permitted to separately compensate players.

4. Sell Local Team and Stadium Sponsorships:

- (i) Teams must use the League Office standard local sponsorship agreement form (or other League-approved form) for all sponsorships and submit any such agreement to the League Office for approval.
- (ii) As described more fully in the Team Commercial Guidelines, Teams may sell local sponsorships in specified commercial categories, while they are restricted from other certain commercial categories, including those categories that are sold exclusively by SUM on a national basis.
- (iii) Teams may not sell local sponsors the rights to conduct activities outside of the Home Territory.
- (iv) Teams may not sell local sponsors the rights to any MLS special event or program (e.g., MLS First Kick, MLS All-Star, MLS Cup, Futbolito)
- (v) Teams may not issue any consumer product licenses or manufacture any merchandise.
- (vi) As detailed in the MLS Stadium/On-Site Commercial Guidelines, all stadium-related sponsorships must comply with the League Rules.

5. License Local Media Rights:

- (i) As with local sponsorships, all local media agreements must be on the League Office standard local television and radio distribution form agreements, and, further, must be drafted by and approved by the League Office.
- (ii) As described in the Broadcasting Manual, Teams may license certain games to a local broadcaster.
- (iii) Local media agreements must:
 - Reserve all national rights for MLS/SUM use, including terms that: (1) protect the rights of national broadcast partners (e.g., scheduling, exclusive windows, recapture, side-by-side, etc.); (2) reserve digital distribution (e.g., internet, mobile), VOD, subscription service, pay-per-view, theater, film, out-of-market television, home video, highlight, re-air and international distribution rights; and (3) grant the ability for MLS to use the local clean and/or dirty feed to exploit national reserved rights (e.g., providing the clean feed for Univision and the dirty feed for MLSsoccer.com and international distribution);
 - Retain the copyright in the telecast for MLS and the ability for MLS to use graphics and announcer calls in perpetuity for any reserved rights;
 - Ensure production meets MLS Minimum Production Requirements;
 - Provide game records and highlight melts to MLS archive;

- Protect first right of negotiation for Official MLS Sponsors to purchase broadcast commercial inventory; and
- Retain two (2) thirty-second (:30) commercial spots for MLS use.

6. Execute Stadium Leases:

- (i) Each Team Operator shall enter into and assume all rights and obligations for a Stadium Lease.
- (ii) Each Stadium Lease shall be subject to approval by MLS and include provisions as MLS specifies including, without limitation, protection of scheduling rights, protection of sponsorship rights within the “field of play”, third-party beneficiary rights and the right for MLS to “step-in” and take over the lease in the event of a Team Operator default.

C. Soccer United Marketing.

1. *General; Purpose.*

- (i) *Purpose:* In 2002, Major League Soccer owners formed Soccer United Marketing, LLC for the purpose of increasing the commercial value of soccer in North America. All Team Operators own an equal share of SUM.
- (ii) *Governance:* The day-to-day affairs of SUM are managed by the SUM Corporate Office under the leadership of the Chief Executive Officer. Each Team Operator has a seat on the SUM Board of Governors. The SUM Board meets three times per calendar year and with limited exceptions all decisions are made by a Super Majority Vote.
- (iii) *Committee Appointment:* The CEO has the authority to establish committees for any purpose and to appoint the members and the chair of each such committee in his discretion (except for members of the Executive Committee, who are subject to approval by the Board of Governors as described below). Each committee will have a representative membership as determined by the CEO in good faith. All committee members will serve staggered terms of three years each, except for Executive Committee members who have varied term length. The CEO may serve as an *ex officio* member of all SUM committees and may appoint other *ex officio* members to any SUM committees. The CEO may serve as chairman of any committee. The CEO may at any time dissolve any committee.

2. *Commercial Rights.* Pursuant to the Rights Agreement between MLS and SUM, SUM has the exclusive right to sell MLS’s national commercial rights, including sponsorship, broadcasting and consumer product licenses. As noted above, Team Operators may enter into local sponsorship and broadcast agreements in compliance with the League Rules. SUM also currently (i) sells the commercial rights for Federación Mexicana de Fútbol Asociación, A.C., United States Soccer Federation, Inc., CONCACAF Champions League and CONCACAF Gold Cup, and (ii) promotes multiple games featuring international clubs each year.

3. *SUM Non-Competition Provision.* A basic tenet of the SUM Operating Agreement is the non-competition provision, which requires each member of SUM (including Team Operators) to provide SUM the first right to pursue any new soccer-related business opportunity (e.g.,

relationships with any national team, club team or international soccer federation, broadcast rights acquisition and sale, etc.) in North America before it may pursue such opportunity.

- (i) *Application.* The Member must submit an application for waiver to the SUM CEO detailing the opportunity in full. The SUM CEO will then make a preliminary decision whether or not for SUM to explore the opportunity. Alternatively, the SUM Board of Governors upon a Super Majority Vote may elect to consider the business opportunity. If SUM approves the opportunity preliminarily, then all material terms shall be defined and presented to the SUM Board of Governors for final review and approval.
- (ii) *Approval.* If SUM approves the business opportunity, then SUM may act upon such opportunity. If SUM does not approve, then the Member that presented the opportunity may pursue it on the same material terms.
- (iii) *Prohibition.* The SUM Board of Governors may still, by Super Majority Vote, prohibit the Member from pursuing the business opportunity.
- (iv) *Adverse Impact.* If any business opportunity would be adversely impacted by SUM's direct participation, then such business opportunity may be pursued in the name of the Member so long as SUM approves by a Super Majority Vote and SUM fully participates in the economic cost and benefits of the opportunity.
- (v) *Costs.* SUM will pay preliminary costs and expenses of the business opportunity if SUM opts in or prohibits a Member from pursuing the business opportunity. SUM will not reimburse for any costs and expenses in excess of \$25,000 unless otherwise approved by the SUM CEO or President or approved by a Super Majority Vote of the disinterested Members.

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Defined Terms.

For the purpose of the Constitution, all capitalized terms shall have the meanings set forth in the MLS LLC Agreement, unless otherwise defined below or otherwise in this Constitution.

“Alternate Governor” means the individual appointed to such position by a Member in accordance with the MLS LLC Agreement.

“Authorized Representative” means an individual who is a senior director or officer of the Member and has been appointed by the Member to attend Board meetings.

“Board of Governors” means the governing body of MLS comprised of representatives of the Members, as such governing body is appointed in accordance with the MLS LLC Agreement.

“Collective Bargaining Agreement” means the Collective Bargaining Agreement between MLS and the Major League Soccer Players Union, including any and all exhibits and side letters, and any successor thereto.

“Governor” means the individual appointed to such position by a Member in accordance with the MLS LLC Agreement.

“League” means the Division I professional soccer league operated by MLS.

“Member” means any Person who has been admitted to MLS as a member of MLS in accordance with the terms of the MLS LLC Agreement and who, at such time, owns a Membership Interest. Most Members are also Team Operators.

“Member Equity” means, collectively, (i) all membership interests, partnership interests, capital stock and other equity interests of any kind in any Member; (ii) all membership interests, partnership interests, capital stock and other equity interests of any kind in any Person that, whether directly or through one or more intermediate entities, owns any Member Equity of the type described in the foregoing clause (i); (iii) all notes, obligations, evidence of indebtedness and other securities or interests of any kind that are or may become convertible or exchangeable into any Member Equity of the type described in the foregoing clause (i) or (ii); and (iv) all warrants, options and other rights to purchase or otherwise acquire any Member Equity of the type described in the foregoing clause (i), (ii) or (iii).

“MLS Games” means all regular season, playoff, exhibition, championship, all-star and international soccer games presented by, on behalf of or otherwise sanctioned by MLS.

“MLS LLC Agreement” means the Sixth Amended and Restated Limited Liability Company Agreement of MLS, as it may be amended, restated, supplemented or otherwise modified from time to time.

“Owner” means, with respect to any Member, each Person (including both the trustees and beneficiaries of any trust) that, directly or indirectly (including through one or more intermediate entities) owns of record, or beneficially an interest in, such Member.

“Ownership Interest” means, with respect to any Member or Owner, collectively (i) any membership interest in MLS and (ii) any Member Equity.

“Player” means any soccer player (regardless of whether or not he is currently employed or under contract to MLS) whose playing rights within MLS are held by a Team Operator according to MLS’s Competition Guidelines.

“Player-Related Party” means any Player’s agent, relative, or any other entity or individual acting on behalf of or controlled by such Player, including any entity that may hold rights to such Player.

“SUM Board of Governors” means the governing body of SUM comprised of representatives from the members of SUM.

“SUM Operating Agreement” means the Fourth Amended and Restated Limited Liability Company Agreement of SUM, as it may be amended, restated, supplemented or otherwise modified from time to time.

“Team” means a soccer team that is a member of the League. Where appropriate, such term shall be deemed to include a reference to the Team Operator of such team.

“Team-Related Party” means any Team Operator, any Owner, officer, director, employee, agent or representative of any Team Operator or Owner, or any related entity or other third party acting on behalf of a Team or Team Operator.

“Team Operator” means any Member who holds a class of membership interest under the MLS LLC Agreement that grants such Member the right to operate a Team.

Section 1. Board of Governors

The day-to-day affairs of MLS are managed by the League Office under the leadership of the Commissioner. Generally, the Board of Governors provides input on strategy, approves the annual budget, and considers and adopts major policies. This Section 1 further explains provisions of the MLS LLC Agreement relating to the operation and authority of the Board of Governors.

A. Board of Governors.

1. *General Supervision.* The Board of Governors has the sole authority to manage, control and make all decisions relating to MLS, unless the MLS LLC Agreement provides otherwise.

2. *Action Binding upon all Members; Super Majority Vote.* All actions of the Board of Governors are binding on MLS and all Members. Actions taken by MLS generally require a Super Majority Vote of the Board of Governors. A Super Majority Vote means a vote of two-thirds (2/3) or more of the ownership percentages held by all Members eligible to vote. A Member may be precluded from voting on a particular matter as provided in the League Rules, including, for example, (i) any vote regarding the exercise of remedies if that Member defaults on a capital call or (ii) any vote to approve a Transfer of any Ownership Interest by that Member or any of its Owners.

3. *Right to Employ.* The Board of Governors has the power to employ the Commissioner, who shall serve as the Chief Executive Officer of MLS.

4. *Affiliate Transactions.* Any agreement between MLS and any Member, Owner or any of their respective affiliates must be (i) disclosed to all Members and approved by a Super Majority Vote (inclusive of the interested Member) and (ii) on terms no less favorable to MLS than those that would be obtained from an unaffiliated third party in an arm's length transaction.

5. *No Additional Payments.* No Governor or Board Representative of any Member may receive any compensation that relates to his/her services as a Board member.

B. Meetings of the Board of Governors. The Board of Governors shall hold three (3) scheduled meetings per year as well as any special meetings called by the Commissioner or by the request of Members holding at least fifty percent (50%) of the membership interests in MLS.

C. Board of Governors Representatives.

1. *Majority Owner.* Unless otherwise approved by a Super Majority Vote of the Board of Governors, each Member must have one (1) single individual Owner who (i) holds no less than a 35% ownership interest in the Member; (ii) has control over the decisions of the Member; and (iii) serves as the Governor for such Member, unless otherwise permitted by the Board of Governors representative rules in subsection (2) below (the "Majority Owner").

2. *Representatives.* Each Member is represented on the Board of Governors by a Governor, and may also appoint an Alternate Governor and other approved representative in accordance with this Section 1.

- a. Each Governor must be a principal Owner of the Member. The Governor must have the authority to act on behalf of the Member. Governors are required to attend Board meetings.
- b. Each Member may also appoint an Alternate Governor, who must be a senior director or officer of the Member and who may attend Board meetings on behalf of the Governor, provided that he/she has the authority to vote on all matters.
- c. Each Member may also appoint an Authorized Representative who may attend Board meetings in addition to the Governor and/or Alternate Governor.
- d. The Commissioner has the authority (in his sole discretion) to permit family members of certain Owners to attend Board meetings.
- e. The Commissioner has the authority (in his sole discretion) to permit Chief Business Officers and technical directors to attend certain Board meetings.
- f. General managers, coaches, players and other Team executives with day-to-day operating responsibilities will not be permitted to serve as Governors or Alternate Governors.
- g. The Commissioner has the sole authority to determine whether an executive of a Member has "day-to-day operating responsibilities" and, therefore, may not serve as a Governor or Alternate Governor. When determining whether such executive may serve as a Board representative, the Commissioner will evaluate the following criteria: (i) size of equity ownership in the Member; (ii) number of years of service in an executive capacity for the Member; and (iii) overall responsibilities for the Member.
- h. The Commissioner has the authority to call an executive session at which only Majority Owners may attend.

3. *Proxy.* The Governor will endeavor to attend all Board meetings, whether by conference call or in person. If neither the Governor nor the Alternate Governor is able to attend, the Member may recommend an Authorized Representative as proxy for approval by the League Office in advance of the meeting to represent or vote on the Governor's behalf. The holder of the proxy cannot be someone involved in the day-to-day operations of the Team. If the Governor, the Alternate Governor or such approved Authorized Representative is unable to attend, the Member will not have a right to vote on the subject matter of such Board meeting. For all meetings, only the Governor or Alternate Governor or approved Authorized Representative may be permitted to vote on behalf of the Member.

4. *Correspondence; Replacement of Governor.* Each Member must provide the League Office with the names of the designated Governor and Alternate Governor. Such names will be the contacts for all Board correspondence, and as necessary, each may distribute correspondence to its senior advisors. The League Office must be notified of, and the Commissioner must approve, any replacement of a Governor or Alternate Governor at least twenty-four (24) hours in advance of a Board meeting.

D. Notice of Meetings. Prior written notice of all meetings of the Board of Governors will be given to each Governor at least ninety-six (96) hours prior to the meeting. Attendance by a Member representative means the Member received timely notice of the meeting.

E. Quorum. A quorum means Governors representing Members holding a majority of the membership interests in MLS held by those Members who are entitled to vote. A quorum is necessary for the transaction of any business by the Board of Governors unless otherwise provided in the League Rules.

F. Voting. Issues arising at Board of Governors meetings are generally decided by a Super Majority Vote. Each Governor has a number of votes equal to the ownership percentage in MLS of the Member that appointed such Governor.

G. Written Resolution. The Board of Governors may act outside a meeting of the Board of Governors by written resolution adopted and consented to by Governors representing Members who hold at least 75% of the membership interests in MLS held by those Members who are entitled to vote on such action.

H. Other Business of Members. Each Member, its Owners and its Affiliates are free to engage in other business ventures, subject to the non-competition restrictions in Section 9 of this Constitution and the Governing Documents.

Section 2. Commissioner's Authority

As permitted by Article 6.1.4 of the MLS LLC Agreement, MLS employs a Commissioner to serve as the Chief Executive Officer of MLS and the principal public spokesperson for the League. The Commissioner reports to the Board of Governors and is charged with managing the overall business of MLS, protecting the integrity of MLS and preserving public confidence in the League.

A. General Authority of the Commissioner. The Commissioner has the responsibility for the general supervision and direction of all business and affairs of MLS and all such other authority

as may be necessary or appropriate to fulfill his responsibilities. The Commissioner is responsible for the coordination and general supervision of policy matters.

B. Authority of the Commissioner. The Commissioner's authority and duties include, but are not limited to, the authority specified in the League Rules, and any others authority and duties that are granted or assigned to the Commissioner by the Board of Governors.

1. *Policy and Procedures.* The Commissioner may establish League Rules unless any such League Rule directly contradicts an express provision of any Governing Document. All decisions and enforcement by the Commissioners are final, binding, conclusive and unappealable, unless a decision has a material adverse financial impact on Team value, in which case, the decision will be subject to reversal by the Board of Governors by a Super Majority Vote under the Governing Documents.

2. *Appointment of Staff.* The Commissioner may, subject to the approved budget, hire a League Office staff. The Commissioner will determine the duties, compensation, and term of employment of the League Office staff.

3. *Financial Matters.* The Commissioner will present the Board of Governors with an annual budget for approval. Subject to the approved budget, the Commissioner may incur expenses on behalf of MLS in order to conduct the business and affairs of MLS, including, but not limited to, the leasing of office space and hiring of employees, outside legal counsel and other professional assistance. The Commissioner may also establish and maintain bank accounts and credit facilities on behalf of MLS and approve payment of all proper charges.

4. *Contracting Authority.* The Commissioner may arrange for and negotiate on behalf of MLS all ordinary business, including, without limitation, contracts with Players, media partners, sponsors, licensees, stadia, consultants and other soccer leagues, teams and associations.

5. *Scheduling and Approvals.* The Commissioner has the right to set the date and time of all MLS Games, including playoff games, and approve all games involving one or more Teams consistent with the obligations of MLS and SUM under their media contracts, the availability of stadium facilities and, in the Commissioner's judgment, the best interests of all Teams involved.

6. *Officials.* The Commissioner is responsible for selecting and appointing the game officials and all other League officials, other than officials required to be appointed by the United States Soccer Federation.

C. Disciplinary Powers.

1. Subject only to Section 3 below, the Commissioner has full and complete authority to discipline any Member (including all Team Operators), Owner, officer, director, manager, Governor, Alternate Governor, Team president, general manager, coach or other employee of any Team Operator or any employee of MLS, in the manner he determines to be in the best interests of the League. The Commissioner has full and complete authority to discipline any Player, subject only to the terms and conditions of the Collective Bargaining Agreement.

2. In all cases involving the integrity of the game of soccer or public confidence in the League, the Commissioner's determinations under this Section 2 are final and binding and not subject to any appeal or other review.

D. Dispute Resolution. Subject the Collective Bargaining Agreement, the Commissioner has full and (subject to Section 2.E) exclusive jurisdiction and authority to arbitrate and resolve:

1. any dispute that involves two or more Members or two or more Owners (regardless of whether such Owners are Owners of the same Member or different Members);
2. any dispute (i) between any Player and any Member or (ii) between any Member and any employee of such Member if the dispute relates to such Member's MLS business;
3. any dispute between or among Players, other employees of MLS, or coaches or other employees of any Member (unless the dispute is unrelated to and does not affect MLS); and
4. any dispute involving any Member, any Player or any other employee of MLS or any Team Operator that in the Commissioner's opinion is detrimental to the reputation and public image of MLS, any Team or the game of soccer or involves or affects League policy.

E. Right to Designate or Decline. Notwithstanding the foregoing, the Commissioner may, in his sole discretion, (i) designate any individual of his choosing to exercise his authority under Section 2.C, and/or conduct any arbitration and resolve any dispute within his authority under Section 2.D, and all references in Sections 2.C and 2.D to the Commissioner shall include any individual so designated in writing by the Commissioner, and (ii) decline to arbitrate any dispute listed in Section 2.D.1-4 that the Commissioner determines should not be arbitrated by the Commissioner for any reason.

Section 3. Misconduct

A. Player Misconduct. Subject to the Collective Bargaining Agreement, if, in the opinion of the Commissioner, any Player (i) commits an act at or during any MLS Game that is detrimental to the reputation and public image of MLS, any Team or the game of soccer, (ii) engages in off-field misconduct that is detrimental to the reputation and public image of MLS, any Team or the game of soccer, (iii) engages in off-field misconduct that provides just cause for discipline (subject to the MLS grievance-arbitration policy of the CBA) or (iv) violates his Standard Player Agreement or his obligations under the Collective Bargaining Agreement, the Commissioner, or the MLS Disciplinary Committee (as defined in the Collective Bargaining Agreement) in the case of clause (i) above, may impose a fine upon such Player, suspend such Player (for a definite or indefinite period) from participating in MLS Games (or may order both such a fine and a suspension), or terminate such Player's Standard Player Agreement.

B. Misconduct of Persons Other Than Players.

1. *Violations; Discipline*. If, in the opinion of the Commissioner, any Member (including any Team Operator) or any Owner, officer, director, manager, coach or other employee, representative, agent or third party contractor of any Member (including any Team Operator) violates any provision of a League Rule or makes any statement or engages in any conduct that is detrimental to the League or soccer in general, unless the League Rules establish a specific penalty for such violation, the Commissioner has full and complete authority to determine the penalty. Examples of penalties the Commissioner may impose include, without limitation, (i) a fine upon such Person of up to \$1,000,000 (or greater amount as may be expressly provided by a League Rule), (ii) the suspension such Person for a definite or indefinite period from involvement in, association with and participation in the League and any League or Team

matter, including the operation of the Team; provided that any indefinite suspension or any suspension of at least 17 games or 6 months shall be subject to review by the Board of Governors, which may rescind (or shorten the length of) such suspension by a Super Majority Vote, (iii) loss of draft picks, allocations (including their monetary value), discovery player slots or designated player slots, (iv) the deduction of points in the League standings or (v) disqualification from a tournament or competition. Furthermore, each Member (including each Team Operator) must take appropriate action as directed by the Commissioner in order to address misconduct.

2. *Evidentiary Standard.* In the absence of a specific provision in the applicable League Rule that provides for a different evidentiary standard, in determining whether any Person has violated any provision of a League Rule, the Commissioner shall determine, in his sole discretion, whether it is more likely than not that such a violation occurred.

3. *Examples of Misconduct.* Misconduct for which the Commissioner may impose discipline include, without limitation, any violation of a criminal law, domestic violence, illegal or excessive gambling and similar conduct. For clarity, the foregoing list is non-exclusive, the Commissioner has sole discretion to identify and discipline any type of conduct as he deems appropriate, and nothing in this Section 3 shall limit MLS's right to terminate the Operating Agreement or an Owner's Ownership Interest in any Team Operator in accordance with the terms of the Operating Agreement.

4. *Procedure.* Prior to the Commissioner, directly and in his capacity as Commissioner (and not, for the avoidance of doubt, through or on behalf of a designee, such as the MLS Disciplinary Committee, which is generally responsible for discipline for on-field misconduct), imposing any discipline under this Section 3, he shall provide the applicable Person an opportunity to respond in writing (or in such other manner as the Commissioner in his sole discretion determines appropriate) to address the allegation. Any Person subject to discipline that is imposed directly by the Commissioner in his capacity as Commissioner (and not, for the avoidance of doubt, through or on behalf of a designee) shall have the right to petition the Commissioner for discretionary review of such discipline. Each such petition shall be filed with the League Office promptly following the delivery of notice of such discipline to such Person. Such petition shall state in reasonable detail the basis for the appeal. The Commissioner shall have the sole discretion to determine whether the appeal should proceed to a hearing, or if a decision based upon the facts as presented is appropriate, which decision shall be final and binding. If the Commissioner determines that the appeal should proceed to a hearing, the Commissioner shall designate procedures and a date, time and place for such hearing. On the appeal, the Commissioner may affirm, reverse or modify the earlier discipline in his sole discretion, and the Commissioner's determination shall be final, binding and non-appealable.

C. Right to Designate. Notwithstanding the foregoing, the Commissioner may, in his sole discretion, designate any individual of his choosing to exercise his authority under Sections 3.A and 3.B, and all references in this Section 3 to the Commissioner shall include any individual so designated in writing by the Commissioner.

D. Duty to Report Personal Conduct Violations. Each Team Operator and Team-Related Party shall be obligated to report, in reasonable detail, any off-field personal conduct known or suspected by such Team Operator or Team-Related Party, as applicable, that may constitute a violation of the League Rules, regardless of how such information came to be known or suspected. Team Operators are responsible for educating their Team-Related Parties with respect to this reporting obligation. League personnel shall have a similar obligation to report such known or suspected prohibited off-field personal conduct. The failure promptly to disclose any

such information required by this Section 3.D shall be grounds for disciplinary action as determined by the Commissioner in his sole discretion.

E. League Investigations. The Commissioner may, on his own initiative or based upon reports or complaints, commence an investigation into whether any violation of the League Rules has occurred. The timing and scope of any such investigation shall be based upon the particular circumstances of the matter and determined by the Commissioner in his sole discretion, and there shall be no limitation of time barring any such investigation by the Commissioner. The Commissioner may conduct such investigation directly, or he may designate one or more representatives to conduct any such investigation on his behalf, including internal League staff members and/or outside persons, as determined by the Commissioner in his sole discretion.

In connection with any such investigation, the League may rely on information obtained by law enforcement agencies, court records, the Commissioner's own direct or indirect investigations, or any other source deemed credible by the Commissioner. Additionally, the League investigator(s), including the Commissioner, may consult with expert and independent advisors in conducting investigations and evaluating potential violations.

The Commissioner and/or his representatives shall have the authority to require any Team, Team-Related Party and, subject to the provisions of the Collective Bargaining Agreement, any Player or Player-Related Party, to meet with and respond to all inquiries from the Commissioner and/or his designee(s), to provide any other assistance requested by the Commissioner and/or his designee(s), and/or to produce any relevant information, including documents (in any form), digital information and data, communications (including without limitation telephone, text and electronic mail records) and physical evidence. Without limiting the generality of the foregoing, relevant individuals may be required to produce insurance records, tax returns or other relevant tax materials or accounting information disclosing (i) the income or revenue information of the relevant Player, Player-Related Party, Team or Team-Related Party and/or (ii) any information of the Team or any Team-Related Party relevant to the investigation. The League will make reasonable efforts to safeguard the information it receives in connection with its investigations as confidential, and such information will not be released to the general public or the media.

F. Relationship to Criminal Investigations. With respect to matters that both the League and law enforcement are investigating, the League will work to cooperate with and to avoid any conflict or interference with the law enforcement proceeding. To that end, the League may, in its sole discretion, delay its own investigation until the conclusion of a parallel law enforcement investigation.

The League expressly reserves the right to indefinitely suspend Players or non-Players with or without pay (as determined in the Commissioner's discretion based on the relevant circumstances) for alleged conduct that is potentially detrimental to the League or the game of soccer, pending resolution of an external law enforcement investigation and/or a final disciplinary decision by the League. Any such suspension of a Player shall be subject to the Commissioner appeals process set forth in Section 20.2(iv) of the Collective Bargaining Agreement.

In cases where there has been a finding of criminal liability, such finding may not be challenged in a League disciplinary hearing (if any). Additionally, in cases where the applicable conduct did not result in a criminal conviction, an individual may still be subject to League discipline if the Commissioner (or his designee(s)) determines that it is more likely than not that such individual violated any League Rule.

The League reserves the right to compel an individual to cooperate with its investigation even if such individual is the target of a pending law enforcement investigation or proceeding. Under such circumstances, the League may proceed with an investigation despite the pending criminal proceeding. The League may also impose discipline for the underlying conduct being investigated, notwithstanding the applicable individual's refusal to cooperate with the League's investigation. In such a case, the League may draw a negative inference with respect to liability for the underlying conduct based on any such failure to cooperate, but such failure shall not be an independent basis for discipline.

G. Duty to Cooperate. Each Team and Team-Related Party shall have an affirmative obligation to cooperate with any League investigation into any violation of the League Rules, including without limitation with respect to salary budget circumvention, tampering and personal conduct. Additionally, each Team and Team-Related Party shall have an affirmative obligation to ensure that any person acting on his, her or its behalf shall cooperate with any such investigation. Such cooperation shall include prompt and substantive compliance with any requests by the Commissioner and/or his designee(s) in connection with any investigation.

Each Team and Team-Related Party shall be subject to independent sanctions as determined by the Commissioner in his sole discretion for failure to cooperate with League investigations as required above. The League will not tolerate retaliation of any kind against individuals cooperating in good faith with a League investigation. Additionally, any person who directly or indirectly interferes with a League investigation in any manner, including by retaliating or threatening to retaliate against an individual, shall be subject to such sanctions as determined by the Commissioner in his sole discretion, subject to any limits imposed by the Collective Bargaining Agreement.

Section 4. Board of Governors' Committees

A. Commissioner's Appointment. The Commissioner and the Board of Governors each has the authority to establish committees for any purpose and the Commissioner has the sole and exclusive authority to appoint the members and the chair of each such committee in his discretion. Each committee will have a representative membership as determined by the Commissioner in good faith. All committee members will serve staggered terms of three years each. The Commissioner will serve as an *ex officio* member of all MLS committees and may appoint other *ex officio* members to any MLS committees. The Commissioner may serve as chair of any committee. The Commissioner may at any time dissolve any committee.

B. Committees. Such committees may include, but are not limited to, the following:

1. *Advisory Finance Committee.* The Advisory Finance Committee assists the League Office and the Board of Governors in their oversight of MLS's treasury, financial accounting and budgeting functions and in the approval of Team indebtedness and certain Transfers by Owners of their ownership interests in the Team Operator.

2. *Competition Committee.* The Competition Committee assists the League Office and the Board of Governors in their oversight of MLS's player budget, player expenditures and player assignment system. The Committee will recommend the annual player budget and formulate division of player expenditures, devise League Rules regarding principles of player assignment and expenditures, and review any player expenditure not contemplated within the player budget.

3. *Expansion/Transfer Committee.* The Expansion Committee assists the League Office and the Board of Governors in their oversight of (i) the process and procedures relating to League expansion, including asset pricing, market priority and selection and new ownership approval and (ii) the development of the League's overall expansion strategy.
4. *Technical Committee.* The Technical Committee assists the League Office and the Board of Governors in their oversight of League Rules and other matters relating to competition, including rules of play.
5. *Labor Committee.* The Labor Committee assists in the development of an overall labor strategy with outside labor counsel, and will meet during the collective bargaining agreement negotiating period, and as necessary.
6. *Media Committee.* The Media Committee assists in the formation and development of an overall media strategy, created to maximize the value of League content in broadcast, digital, wireless and international distribution.
7. *Philanthropy.* The Philanthropic Committee serves as an advisory board for MLS W.O.R.K.S. and makes recommendations regarding philanthropic initiatives.

Section 5. Transfer of Membership

No Transfer of any Ownership Interest may be made unless the Member complies with the provisions of Article 8 of the MLS LLC Agreement, which are generally summarized in this Section 5.

- A. **General.** Generally, the Transfer, including any sale, pledge, hypothecation, assignment or other transfer or encumbrance, of any Ownership Interest must be approved by a Super Majority Vote (excluding, for this purpose, the Member by or in which a Transfer is proposed).
- B. **Application.** Promptly after any agreement relating to the Transfer is reached, the applicable Member (on behalf of itself or the transferring Owner, as applicable) must submit a written request for approval to the Commissioner. All such agreements must expressly provide that the consummation of the Transfer is subject to receiving all necessary approvals from MLS and SUM. The Commissioner may instead accept a request for approval directly from a prospective Owner in two instances: (i) when the prospective Owner has a security interest in the Ownership Interest proposed to be transferred that has previously been approved by MLS or (ii) when, in the Commissioner's sole judgment, the best interests of MLS would be served.
- C. **Request for Information.** The Commissioner has the right to request and require the transferring Member or Owner and the proposed transferee to furnish to the Commissioner copies of all agreements relating to the Transfer and any other information about the Transfer, the proposed transferee, each prospective Owner and any other people or entities that are associated with the proposed transferee or any prospective Owner. The transferring Member or Owner is responsible for the timely receipt of all information requested by the Commissioner or the League Office.
- D. **Transferee Compliance.** Any agreement to Transfer any Ownership Interest and any application requesting approval of such Transfer must include a binding agreement of the

proposed transferee and each prospective Owner stating that if the Transfer is approved by MLS, the proposed transferee and each prospective Owner will abide by (and cause their respective Owners, Affiliates and Subsidiaries to abide by) all League Rules.

E. Background Evaluation. Upon receipt of an application and requested information about a Transfer, the Commissioner will conduct a background evaluation of the Transfer and proposed transferee and prospective Owners. Upon the completion of a satisfactory background evaluation, the Commissioner will submit the proposed Transfer and other relevant information to the Board of Governors for approval (except for any Transfer that does not require Board of Governors approval under Section 5.G below or in the MLS LLC Agreement). At this time, the Board of Governors may request the personal appearance of the proposed transferee and its owners in front of the Advisory Finance Committee and/or the Board of Governors. A Transfer will only be effective if and when it is approved by a Super Majority Vote (except as expressly provided in Section 5.G below or in the MLS LLC Agreement).

F. Expenses. Whether or not the Transfer is approved, the transferring Member (or the Member in which a Transfer is proposed) is responsible for the payment of all expenses incurred by MLS in investigating, reviewing, and processing the application (including, but not limited to, attorney's fees).

G. Advisory Finance Committee Approval of Certain Transfers. The following Transfers are permitted without a Super Majority Vote of the Board of Governors:

1. If a proposed Transfer involves (x) a ten percent (10%) or smaller Ownership Interest in a Member, or (y) the Transfer of an interest in a Member to a different entity owned by substantially the same Owners in substantially the same proportions (provided that the aggregate direct and indirect changes in ownership, if any, do not exceed ten percent (10%)), in each case, as determined by the Commissioner in his sole discretion, then the Advisory Finance Committee may approve such proposed Transfer without submitting it to the Board of Governors for approval, unless (A) the Transfer would result in any Person (or group of Persons acting in concert) that has not been approved by the Board of Governors or the Advisory Finance Committee directly or indirectly owning an Ownership Interest of ten percent (10%) or larger in a Member or (B) the effect of such a proposed Transfer is or may be to change the ownership of effective control of such Member.

2. The restrictions in Article 8 of the MLS LLC Agreement regarding Transfers are not applicable to a proposed Transfer of any securities that are publicly traded on any generally recognized stock exchange or over-the-counter market, unless (i) the interest proposed to be transferred represents a direct or indirect interest of five percent (5%) or larger in a Member, (ii) the Transfer would result in any Person(s) that has not been approved by the Advisory Finance Committee or the Board of Governors directly or indirectly owning an interest of at least five percent (5%) but less than ten percent (10%) in a Member, (iii) the Transfer would result in any Person(s) that has not been approved by the Board of Governors directly or indirectly owning an interest of ten percent (10%) or larger in a Member, or (iv) the effect of such proposed Transfer is or may be to change the ownership of effective control of such Member.

3. If a proposed Transfer is in the form of a pledge, lien or hypothecation of an Ownership Interest in connection with the incurrence by any Member or Owner of any indebtedness, the Advisory Finance Committee shall have the power, in its sole discretion, to approve such proposed Transfer without submitting it to the Board of Governors for approval, upon and subject to such conditions as the Advisory Finance Committee may determine.

H. Trust Transfers. Any addition, replacement or substitution of a trustee or a beneficiary of a trust that is an Owner is a Transfer of the entire interest owned by that trust. A Transfer from a Member or any Owner to such Member or Owner's trust is a Transfer of such interest and is subject to the Transfer provisions of this Section 5 and the MLS LLC Agreement. However, upon notice to the League Office, Transfers to a Member or Owner's trust are permitted without a vote by the Board of Governors so long as the trust is formed for the sole benefit of, , one or more of the Member's or Owner's family members (subject to approval of the beneficiaries and/or trustees, as deemed necessary by the Commissioner).

I. Prohibited Transfers. Unless otherwise determined by the Board of Governors, MLS will not approve a proposed Transfer of any Ownership Interest to (i) any governmental or quasi-governmental authority, agency, or instrumentality, (ii) any non-profit or charitable organization or foundation, or (iii) any person or entity not satisfying any minimum ownership criteria that may be established by the Commissioner, the Advisory Finance Committee or the Board of Governors.

Section 6. Relocation

No Team Operator may relocate its Team from its Home Territory or its stadium without the approval of a Super Majority Vote of the Board of Governors.

Section 7. Tampering

A. "Tampering" means any attempt by or on behalf of any Team Operator or any Owner thereof, whether direct or indirect, to hire, negotiate with, make an offer to or influence (i) any Player (or his representative) who is (a) a member of a different Team or (b) not a member of a different Team but with respect to whom such Team Operator does not have priority rights (as described in the Competition Guidelines), unless such Team Operator has received written confirmation from MLS that no other Team has priority rights to such Player, or (ii) any employee of a different Team Operator without first receiving written consent from such Team Operator.

B. No Team Operator nor any Owner, officer, director, employee, agent or representative thereof, may tamper with (i) any Player (or his representative) who is (a) a member of a different Team or (b) not a member of a different Team but with respect to whom such Team Operator does not have priority rights (as described in the Competition Guidelines), unless such Team Operator has received written confirmation from MLS that no other Team has priority rights to such Player, or (ii)(a) any employee under contract with a different Team Operator or (b) any employee of a different Team Operator at the director level or above, in each case of clauses (ii)(a) and (ii)(b), unless written permission is first obtained from the General Manager or principal of such other Team Operator. With respect to an employee referred to in clause (ii)(a) above, permission may not be denied for more senior positions after such employee's then-current Team is eliminated from all postseason matches in the final year of such employee's then-current contract with such Team. With respect to an employee referred to in clause (ii)(b) above, who is not also covered by clause (ii)(a) because such employee is not under contract with his or her current Team Operator, permission may not be denied for more senior positions. The Commissioner or his designee(s) shall have sole discretion to determine whether any tampering has occurred.

C. Where the Commissioner determines that the anti-tampering rule has been violated, the Commissioner has the authority, in his/her sole discretion, to impose a penalty for such offense. Penalties for tampering may include (without limitation) the suspension of the person that tampered for a definite or indefinite period; the prohibition of the offending Team Operator from hiring the person being tampered with for a definite or indefinite period; the forfeiture or deferment of draft picks, allocations, discovery player slots or designated player slots by the offending Team Operator or the transfer of such draft picks, allocations (including value thereof), discovery player slots or designated player slots to the Team Operator aggrieved by the tampering; the deduction of points in the League standings and/or disqualification from any tournament or competition; and/or the imposition of a fine upon the offending person and/or the offending Team Operator up to \$500,000. In the event that the Commissioner imposes a fine, he may direct that some or all of the fine be paid directly to the Team Operator aggrieved by the tampering.

Section 8. Conflict of Interest

A. Interest in or Control of Other Team Operators. No Team president, general manager, coach or any other personnel of a Member may (i) obtain a position with, or directly or indirectly exercise control of any management authority over any other Member or (ii) obtain any direct or indirect financial interest in any other Member, unless, with respect to this clause (ii), (x) the facts in connection with such intended financial interest are disclosed in detail in an application provided to the Commissioner by the applicable Member and such interest is expressly approved by the Board of Governors in accordance with the procedures set forth in the MLS LLC Agreement or (y) such interest represents less than one percent (1%) of any outstanding class of securities that are publicly traded on any generally recognized stock exchange or over-the-counter market.

B. Lending Money. No Member (including any Team Operator) or Owner may, directly or indirectly, lend money or become a surety or guarantor to any other Member (including any Team Operator) or Owner, any Player, or any employee of any other Member (including any Team Operator). The exception to this rule is that Owners that engage in commercial lending as a principal business activity may enter into such lending, surety or guarantee arrangements only if (i) such arrangements are disclosed in detail to the Board of Governors and approved by a Super Majority Vote of the Board of Governors, or (ii) the lending party does not have effective control of a Member, the lending, surety or guarantee arrangements are between the lending party and a Player or an employee of a Member, and such arrangements are on customary commercial terms (i.e., similar for individuals not affiliated with MLS).

C. Interest in Other Leagues. Members (including Team Operators) or Owners may own an interest in a team in another league (including a soccer league) only if such Team Operator or Owner complies with the terms of Section 9 of this Constitution and Article 13.3 of the MLS LLC Agreement.

D. Prohibited Interests of Commissioner and MLS Employees. No MLS employee may directly or indirectly, hold stock or have a financial interest in any Member (including any Team Operator), unless such interest represents less than one percent (1%) of any outstanding class of securities that are publicly traded on any generally recognized stock exchange or over-the-counter market. No MLS employee may lend money to or become a surety or guarantor for any Member or Owner thereof.

Section 9. Non-Competition

In accordance with Section 13.3 of the MLS LLC Agreement, no Member (including all Team Operators), Owner nor any of their respective Affiliates may, without MLS's prior written consent, directly or indirectly undertake certain soccer-related activities.

A. **Soccer-Related Activities.** Until 10 years after the date on which a Member ceases to be a member of MLS, none of such Member, any of its Owners nor any of their respective Affiliates may, unless acting with MLS's prior written consent, directly or indirectly, anywhere in North America, be involved in any way with any soccer-related business that, directly or indirectly, competes with or is otherwise similar to the business of the MLS.

B. **Player Representation.** Until 10 years after the date on which a Member ceases to be a member of MLS, none of such Member, any of its Owners nor any of their respective Affiliates may, unless acting with MLS's prior written consent, directly or indirectly represent any soccer player (i) who is under contract with MLS, (ii) who expresses an interest in contracting with MLS for his playing services, (iii) with whom MLS expresses an interest in contracting with for playing services or (iv) who has United States citizenship or is playing soccer in the United States.

C. **Exceptions.** Notwithstanding the foregoing restrictions in Section 9.B, a Member (including any Team Operator) or Owner may (i) participate in any sports or entertainment business not principally involving soccer, (ii) acquire control of any Person which derives less than 5% of its revenues from a business which competes directly with the business of the MLS, or (iii) make passive investments of less than 5% of the outstanding equity securities in any entity listed for trading on a national stock exchange or quoted on any recognized automatic quotation system.

D. **SUM Non-Compete.** Section 17 of the SUM Operating Agreement contains additional non-competition provisions.

Section 10. Diversity Initiative

The Commissioner has the authority to enact diversity initiatives that facilitate the process of consideration of minorities for coaching staff positions under guidelines adopted by the Board of Governors. Upon the opening or creation of any position involving a technical director, head, assistant or youth coach, the Team Operator's General Manager must notify the League Office. Upon notification, the Team Operator shall interview at least one (1) minority candidate for such available position. Each Team Operator must provide the League Office with information related to the minority candidates interviewed and considered for the available position. If the Team Operator does not adhere to these guidelines, the Commissioner shall have the authority to impose sanctions in the Commissioner's sole discretion.

Section 11. Team Personnel

All Owners, officers, directors, employees, agents and representatives of MLS and of each Member (including each Team Operator) are subject to and must comply with all League Rules, including the tampering policies, confidentiality obligations and other provisions contained in this Constitution. Each Member shall be liable for any non-compliance by any such Member's Owners, officers, directors, employees, agents, representatives or any other Person associated with such Member.

Each Team Operator must include in every contract with any employee of such Team Operator certain language provided by the League Office that, among other things, provides that such employee will be subject to the Commissioner's jurisdiction and bound by all League Rules and provides a non-exclusive list of prohibited conduct (the "Required Employee Language"). Each Team Operator must also include such Required Employee Language in all employee handbooks, of which all employees must acknowledge in writing. Each Team Operator must file each employment contract with the MLS legal department within three (3) business days of the execution of such contract for MLS's review and approval with respect to compliance with any applicable League Rules. Additionally, the Chief Business Officer (e.g., the Team President) of each Team Operator must annually certify in writing that each employee of such Team Operator has acknowledged, in writing, the Required Employee Language. The failure to timely file such employment contracts or submit such employee handbook certification as required by this paragraph may subject a Team Operator to sanctions as determined by the Commissioner. For clarity, the prohibited conduct required to be expressly included in employment contracts and employee handbooks as set forth in the Required Employee Language is prohibited by the League Rules and, if committed by an employee of a Team Operator, will be grounds for discipline of such employee by the Commissioner (or his designee(s)), regardless of whether such conduct is listed in the applicable employment contract or employee handbook.

Section 12. Confidential Information and Non-Disclosure Obligation

A. Confidential Information. Members (including Team Operators), Board of Governors representatives, Owners and MLS and Team executives and other employees receive confidential information relating to internal player policies and collective bargaining, business strategy and the overall health and viability of the League and each of its Teams. Such information is privileged and confidential as between the Board of Governors and MLS and Team executives and employees.

B. No Disclosure. No Member (including each Team Operator), Board of Governors representative, Owner or MLS or Team executive or employee may disseminate, disclose or otherwise share this confidential information with any individual or entity that is not subject to confidentiality restrictions, including members of the media, other employees (not bound by confidentiality restrictions), agents and third-party contractors.

C. Discipline. For the avoidance of doubt, each Member (including each Team Operator) must cause its employees to be bound in writing by this obligation of confidentiality. Any violation of this Section 12 shall be subject to discipline by the Commissioner as set forth in Section 3, including a fine up to \$1,000,000.

Section 13. Player Compensation

This Section 13 summarizes certain provisions of the Competition Guidelines related to player compensation and salary budget rules and circumvention.

A. **General.** Except as otherwise provided in the League Rules, MLS is solely responsible for compensating all Players. Generally, no Member (including each Team Operator), Owner, officer, director, manager, Team president, general manager, coach or other employee of any Team Operator may, directly or indirectly, give any additional compensation to any Player in any manner whatsoever, including without limitation, lodging, car or other transportation or Team ownership rights. Any apportionment of a salary or related compensation paid to a Player for Player's dual services as both a Player and a coach, or in another similar Team management role, must be approved in writing by MLS prior to such Player's provision of such services.

B. **Prohibited Circumvention.** The following conduct is a non-exhaustive list of prohibited circumvention of League Rules unless approved by MLS in writing: (i) payments to a Player's previous Team or to a Player's representatives; (ii) marketing or endorsement agreements between Players and Team sponsors (or other businesses if the deal is brokered by the Team); (iii) agreements between a Team Operator and player agents (e.g., consulting or scouting services); (iv) employment of any relatives of Players; and (v) promises of future employment or payment. In each case of the foregoing, such acts or arrangements must be disclosed in advance and approved by MLS in writing. In the case of clauses (ii), (iii) or (iv) above, MLS will determine whether any payments pursuant to such agreements are in excess of the fair market value of the services rendered.

C. **Records and Required Disclosures.** Each Team is required to keep records of all payments and compensation provided to Players and Player-Related Parties (including Player representatives). Failure to maintain such records may be deemed to be an independent violation of the anti-circumvention rules set forth in this Section 13 and in the Competition Guidelines. A certification of compliance under salary budget rules must be signed and submitted to MLS by the Team representatives set forth in the Competition Guidelines. A monthly report of all fringe benefits payments must also be submitted to MLS. To assist MLS in investigating and making determinations regarding potential prohibited circumventions, each Member (including each Team Operator), Team-Related Party, Player and Player-Related Party is required to disclose to MLS any fact or action that such party is, or becomes, aware of that would reasonably appear to indicate the occurrence of a prohibited circumvention by any party.

D. **Discipline.** In the event the Commissioner (or his designee(s)) determines that any prohibited circumvention has been committed by a Team Operator or a Team-Related Party, the Commissioner may impose any or all of the penalties set forth in Section 3.B; provided that any fine levied may be in an amount up to \$1,000,000 for any Team Operator or Team-Related Party that is an entity and up to \$500,000 for any other Team-Related Party.

Section 14. Team Operations; Termination

- A. Operating Agreement. The day-to-day operations of the Team by any Team Operator shall be governed by the Team Operator's Operating Agreement.
- B. Contracts. Each Team Operator may, as agent for MLS, enter into local broadcast rights agreements, local commercial affiliations, a stadium lease and other related agreements to conduct local marketing and Team operations in accordance with League Rules. All of the foregoing agreements are subject to and conditioned upon MLS review and approval.
- C. Exhibition Games/International Tours. Subject to prior MLS approval, a Team Operator may participate in, host, manage or promote Local Exhibition Games or MLS Exhibition Games (each of the foregoing as defined in the Operating Agreement) or international tours. Notwithstanding the foregoing, MLS or SUM has the right to participate in any Exhibition Games subject to the Governing Documents.
- D. Termination. Each Operating Agreement provides that, under certain circumstances, the Board of Governors may, by a vote of at least 75% of the ownership percentages of MLS, terminate the Operating Agreement or an Owner's Ownership Interest in the Team Operator, including, for example, upon a determination by the Board of Governors that the Team Operator or any Owner has failed to act in the best interest of the League. Generally, in the case of any such termination vote, the Team Operator or Owner will first be given six (6) months to consummate a sale of the Team Operator's assets or the Owner's Ownership Interest (as applicable), after which MLS will be entitled to consummate such a sale to a purchaser approved by the Board of Governors at such price and on such terms as the Commissioner deems reasonable and appropriate. Further details on the circumstances permitting termination and the related procedures and remedies are set forth in each Operating Agreement.

Section 15. Disclosure of Financial Information

Each Team Operator is required to provide financial information to MLS, as requested. The primary required financial information is as follows:

- (i) Audited financial statements for its Team; and
- (ii) A completed Team and stadium financial information questionnaire at least once per year.

The questionnaire requests, without limitation, information related to ticket revenue, local sponsorship and naming rights revenue, stadium revenue, salary information and other cost information. The information collected will be assembled (absent identification of specific Teams) into useful models for (i) Team Operators to benchmark their financial performance against the financial performance of other Team Operators and (ii) prospective Team Operators or prospective Owners to evaluate the investment opportunity. The League Office will not distribute this information outside the League Office, except to potential investors and lenders who have executed a non-disclosure agreement with MLS.



EXHIBIT C



Major League Soccer
420 5th Avenue, 7th FL.
New York, NY 10018

MLSsoccer.com
212.450.1200

September 24, 2019

Mr. Barry Johnson
Mr. Ryan Braithwaite
Bennett Tueller Johnson & Deere
3165 East Millrock Drive, Suite 500
Salt Lake City, Utah 84121

Dear Messrs. Johnson, Braithwaite, Koch, and Bailey:

It has come to our attention that Mike Petke recently filed a complaint against Utah Soccer, LLC, a member of Major League Soccer, L.L.C. ("MLS"), in Utah state court.

Pursuant to Section 2.D.3 of the MLS Constitution, the Commissioner of Major League Soccer (or his designee) has full and exclusive jurisdiction and authority to arbitrate and resolve any disputes between MLS members (like Utah Soccer, LLC) and employees (like Mr. Petke) that relate to the member's MLS-related business. Mr. Petke has expressly acknowledged that he is subject to the Commissioner's jurisdiction in his employment agreements with Utah Soccer, LLC.

Accordingly, MLS requests that Mr. Petke immediately withdraw his complaint in Utah state court. MLS is prepared to arbitrate the dispute between the parties should Mr. Petke make a request that MLS do so. MLS reserves all of its rights.

Very truly yours,

Anastasia Danias Schmidt

CC: Commissioner Don Garber (Major League Soccer)
Deputy Commissioner Mark Abbott (Major League Soccer)
Lindsay Barenz (Real Salt Lake)
Travis Koch (Overstreet Homar & Kuker)
Clayton Bailey (Bailey Brauer)
Benjamin Stewart (Bailey Brauer)



EXHIBIT D

2010 WL 11561604

Only the Westlaw citation is currently available.
United States District Court, D. Utah, Central
Division.

**DESERET GENERATION & TRANSMISSION
CO-OPERATIVE**, a Utah non-profit corporation,
Plaintiff,
v.

PACIFICORP, an Oregon corporation, Defendant.

Case No. 2:10-cv-00159-TC

Signed 09/01/2010

Attorneys and Law Firms

David F. Crabtree, Deseret Generation & Transmission
Co-Operative, So Jordan, UT, **Gary A. Dodge**, **Phillip J.
Russell**, Hatch James & Dodge, Salt Lake City, UT, for
Plaintiff.

Cameron L. Sabin, **D. Matthew Moscon**, **Marc T. Rasich**,
Stoel Rives, Salt Lake City, UT, for Defendant.

ORDER

TENA CAMPBELL, Chief Judge

***1** Deseret Generation and Transmission Co-operative (Deseret) has sued Pacificorp relating to a number of decisions Pacificorp made in managing the Hunter II Power Plant, which the parties own jointly with the Utah Associated Municipal Power Systems. Deseret alleges that Pacificorp failed to comply with the 1999 Amendment to the Operation and Management Agreement that required Pacificorp to, among other things, allow the other two owners to vote on “any Capital Improvement requiring total expenditures in excess of \$1,000,000.” (1999 Amendment to Operation and Management Agreement § 4.1, attached as Ex. C to Mem. Supp. Mot. to Compel Arbitration (the “1999 Amendment”).) Pacificorp seeks to compel arbitration under a limited arbitration provision in the 1999 Amendment and to stay proceedings during arbitration.

Deseret contends that discovery and an evidentiary hearing are needed in order to determine whether the disputed decisions must be arbitrated under the 1999 Amendment.

The Utah Arbitration Act governs the enforcement of agreements to arbitrate. The scope and existence of an agreement to arbitrate must be determined by the Court pursuant to contract law. “ ‘Arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.’ ” Cade v. Zions First Nat. Bank, 956 P.2d 1073, 1076-77 (Utah Ct. App. 1998) (quoting AT&T Tech., Inc. v. Comms. Workers, 475 U.S. 643, 648 (1986)). A party seeking to compel arbitration must present “direct and specific evidence of an agreement between the parties” to arbitrate that dispute. McCoy v. Blue Cross & Blue Shield of Utah, 20 P.3d 901, 905 (Utah 2001).

The agreement between Deseret and Pacificorp does not contain a universal arbitration provision. Rather, it specifies that when Deseret withholds consent to a Major Capital Improvement,¹ either side may request arbitration within 120 days of the “no” vote to determine whether the proposed improvement “is consistent with Reasonable Utility Practice, as defined in the O&M Agreement.” (1999 Amendment § 4(a)(ii)(5).) The arbitrator resolves only this question, and the arbitrator’s decision on the matter is binding. If the Major Capital Improvement comports with Reasonable Utility Practice, the other two owners of the Hunter II Power Plant must contribute funds to the Major Capital Improvement in proportion to their ownership interest. The arbitrator has 120 days to make a decision.

Pacificorp seeks to compel arbitration of two decisions for which it claims it timely sought arbitration: the Baghouse project and the Scrubber project. Pacificorp sought arbitration within 120 days of Deseret’s “no” vote on these projects as required by the 1999 Amendment. Deseret makes three arguments about why the arbitration provision should not apply.

***2** First Deseret argues that the Baghouse and Scrubber decisions are not subject to arbitration because the 1999 Amendment does not provide for arbitration when a project will reduce long-term plant capacity by more than 5 megawatts. But section 4(a)(ii) of the 1999 Amendment does not exempt any Major Capital Improvement from arbitration, including the decisions listed in section 4(b)-(e). (See 1999 Amendment; Operation and Management Agreement § 4, attached as Ex. A. to Mem. Supp. Mot. to Compel Arbitration.) Deseret’s argument

that the Baghouse and Scrubber projects will reduce plant capacity provides the basis for their breach of contract claim but not a basis for circumventing the arbitration provision.

Deseret also argues that it voted against the Baghouse and Scrubber projects in 2006 when it sent a letter to PacifiCorp expressing concern about the project, but at that time the letter was delivered, the projects had not yet been put to a vote of the Management Council.

Finally, Deseret contends that the Management Council's votes on these two decisions were meaningless because PacifiCorp had already begun making expenditures for the Baghouse and Scrubber projects long before the Management Council vote, and these expenditures altered the reasonableness of implementing the projects. This argument goes to the heart of the contract dispute at issue in the pending litigation, but does not alter the terms of the arbitration provision.

Footnotes

- ¹ A Major Capital Improvement is a defined term in the 1999 Amendment referring to a capital improvement requiring total expenditures in excess of one million dollars.

Although Deseret has raised several issues surrounding the Baghouse and Scrubber decisions that may render the arbitrator's decision useless, PacifiCorp is still entitled under the 1999 Amendment to seek arbitration on the limited question of whether the Baghouse and Scrubber projects constitute Reasonable Utility Practice. But the result of the arbitration will not by itself determine the outcome of the pending litigation.

The court GRANTS PacifiCorp's motion to compel arbitration because the parties agreed to limited arbitration in the 1999 Amendment. The court DENIES PacifiCorp's motion to stay because the arbitration will not resolve most of the claims in the case.

All Citations

Not Reported in Fed. Supp., 2010 WL 11561604